

Planning Commission Date: May 26, 2004

Item No. 1.

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearing

Report Prepared by: Staci Pereira

Public Hearing: Yes: X No: _____

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TITLE: "S" ZONE APPROVAL AMENDMENT NO. SA2004-7 AND
USE PERMIT AMENDMENT NO. UA2004-2

Proposal: A request to amend a previously approved mixed use development to reduce the number of residential units from 102 to 96, reduce the retail floor area, modify their Density Bonus approval to exceed the maximum density by 7 units and a request not to provide 27 required parking spaces.

Location: 230 North Main Street (APN 028-24-017 and -018)

RECOMMENDATION: A) Recommend to the City Council approval of the amended Density Bonus, "S" Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2; and

B) Find the partial vacations of Weller Lane, North Main Street and Railroad Court and the acquisition of 8,022 SF are not in conflict with the General Plan.

Applicant: James P. McClelland, Maple Dell + McClelland Architects, LLP, 1646 North California Blvd., Suite 650, Walnut Creek, CA 94596

Property Owner: Badru Valani, Apton Properties, LLC, 46509 Mission Blvd., Fremont, CA 94539

Previous Action(s): "S" Zone Approval No. SZ2002-6 and Use Permit No. UP2002-35

Environmental Info: Negative Declaration (EIA No. EA2003-1) adopted May 16, 2003

General Plan Designation: Mixed Use

Present Zoning: Mixed Use with Transit-Oriented-Development Overlay District ("MXD-TOD")

Existing Land Use: Vacant buildings

Attachments: Site plans, revised traffic study dated March 18, 2004, vibration study dated April 28, 2004, M.O.U. approved by City Council on May 18, 2004

PJ No. 3144

BACKGROUND

On April 14, 2003, the Planning Commission reviewed "S" Zone (SZ2002-4) and Use Permit (UP2002-35) applications for a 5-story, mixed use development consisting of 102 residential units and 6,000 square foot of retail that exceeded the height and setback regulations for the MXD-TOD district. The project also included a density bonus to exceed the maximum allowed density by 13 units and the partial vacation of portions of Weller Lane, North Main Street and Railroad Court. This project was approved with conditions by the City Council on July 1, 2003. Since the approval, modifications have been made to the project which require amendments to both permits.

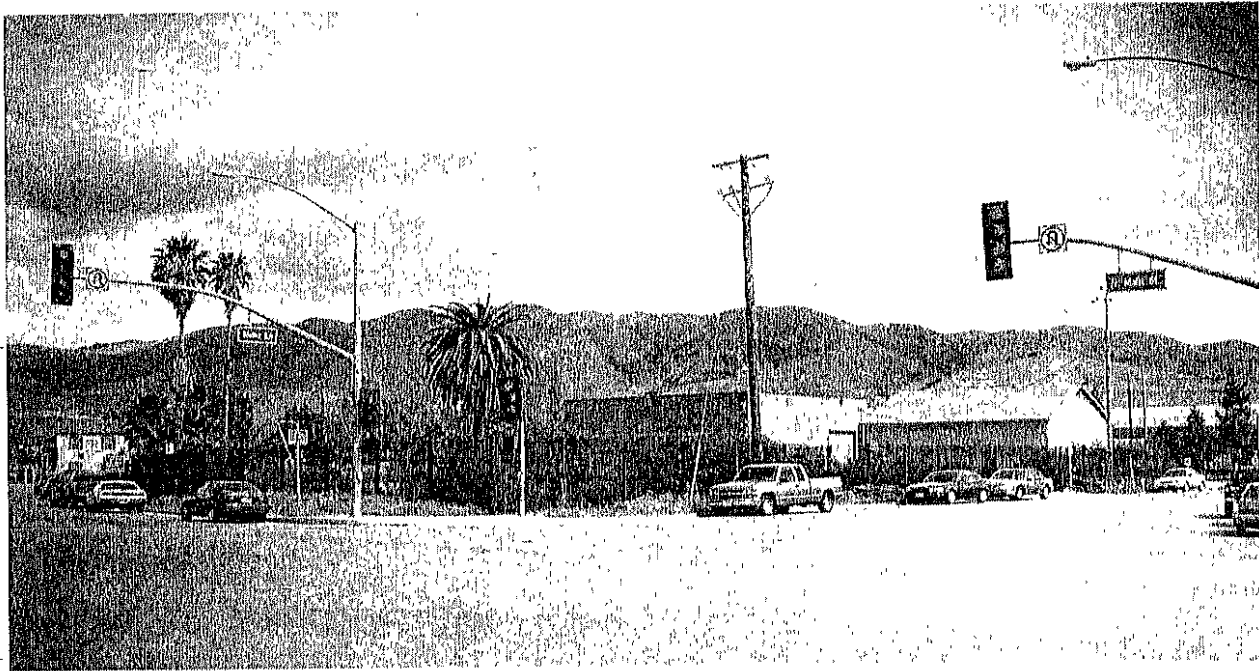
Site Description

The subject site is located at the northeast corner of N. Main Street and Weller Lane. It is bound by the Union Pacific Railroad tracks to the east, N. Main Street to the west, Weller Lane to the south and Railroad Court to the north. W. Calaveras Blvd. (Highway 237) lies further south of the site and the I-880 Freeway is to the west.

The project site is designated on the Milpitas General Plan and Midtown Specific Plan Land Use Maps as Mixed Use and is zoned MXD-TOD (Mixed Use with a Transit-Oriented Development Overlay District). Adjacent land uses include railroad tracks to the immediate east, heavy industrial uses further east, single family and multifamily residential uses (Images and Reflections development) to the north and west, public and quasi-public uses (future Milpitas library and church) to the south and west, and general commercial further south.

Immediately west of the site, across N. Main Street is the Main/Weller bus transit center, which will be relocated to the Great Mall transit center upon its opening scheduled for June 2004. The location of the northern BART station chosen by the City Council on April 16, 2002 lies to the immediate east of the subject site on the Union Pacific Railroad. However, the future development of this second station remains uncertain.

A vacant two-story, 6,000 square foot office building, 1,350 square foot garage, surface parking area, five palm trees and shrubs that border the property fence exist on the parcels.



View looking northeast at subject site from southwest corner of N. Main Street and Weller Lane.

THE APPLICATION

The application is submitted pursuant to Milpitas Municipal Code Sections 42.10 (Applications for Modification or Amendment in "S" Combining District), Section 38.00 (Mixed Used "MXD" District), Section 43.00 (Transit-Oriented-Development "TOD" Overlay District), Section 57.00 (Conditional Use Permit), and Section 54.20 (Density Bonus).

Project Description

The applicant is requesting an "S" Zone Approval Amendment (SA2004-7) for modifications to a previously approved mixed use residential and retail development. The more significant site and design modifications are summarized as reductions to:

- ☐ Residential units from 102 to 96;
- ☐ Density Bonus request to exceed the maximum density from 13 to 7 units;
- ☐ Retail floor area from 6,000 to 3,000 sq. ft.;
- ☐ Number of stories from 5 to 4 and overall building height from 60 to 56 feet.

The amendment also includes minor site modifications including the relocation of the garage entrance from Railroad Court to N. Main Street and the trash enclosure from the southeast corner off of Weller Lane to the northeast corner off of Railroad Court.

As amended, the project would consist of a 4-story mixed-use building with 3,000 sq. ft. of retail space and 96 residential units of the following unit mix:

- ☐ (42) 1-bedroom units: 644 to 839 square foot each
- ☐ (45) 2-bedroom units: 914 to 921 square foot each
- ☐ (9) 3-bedroom units: 1219 to 1,378 square foot each

Site Layout. The 3 stories of residential units would sit atop a 1-story, at-grade podium garage with a 3,000 sq. ft. retail space in the southwest corner. The retail space could accommodate approximately 3 to 4 individual tenants such as a coffee shop, deli, dry cleaner, salon, and small business offices with the intent to serve the on-site residences, the surrounding neighborhood and future library patrons. The 4-story building is proposed in the center of the property. Three towers anchor the corners of the somewhat triangular-shaped site with an additional tower (residential lobby) of similar height along the west property line (N. Main Street). The towers connect the residential and retail tenants spaces, creating an internal courtyard on the 2nd floor atop the podium parking garage.

Vehicular access to the parking garage has been relocated to just north of the residential lobby on N. Main Street. The garage exit remains at the northern end of the project off of Railroad Court. The ingress and egress of the garage would be by way of one inbound and one outbound lane, each proposed at 15 feet in width. Security gates with a card reader would be located within the garage for both driveways to provide 169 secure parking spaces for the residents only. Ten (10) parking spaces for retail patrons would be provided along property's N. Main Street frontage.

Other site features include a 19,274 sq. ft. interior open-air courtyard atop the podium garage with raised planters, lawn and children's play area. Landscaping consists of in-ground planters along the buildings frontages as well as the 10-foot wide rear setback, all planted with Ornamental Pear trees and a mixture of shrubs and groundcover. In addition to the internal open-air courtyard, other site amenities include fitness and community meeting rooms on the 2nd and 3rd floors, respectively and laundry rooms on all residential floors.

Building Architecture. The architectural design of the mixed-use development varies on each elevation. Overall, the design would still consist of 4 towers (the tallest reduced to 60 feet) and vertical elements projecting 5 feet from the rest of the building's surface. The two tallest towers anchor the retail the southwest corner and the residential lobby on the west elevation. The bottom story (podium level) contains the retail spaces, garage entrance and exit (north and west elevations) and metal louvers for ventilation of the garage. Stories above the podium contain windows and balconies for the residential units.

Proposed building materials include stone veneer (on retail facades and podium projections), stucco, metal canopies and roof shelves, and slate roof tiles that all vary in 4 color schemes on each elevation. Adornments include decorative metal bracing that supports solid metal shelves at the top of the towers below the flat roofs, as well as on the building's vertical projections. Metal awning with cable tiebacks are located on some residential windows and above the retail façade. Clocks are proposed at the top of the residential lobby and retail towers.

Land Swap. The project is designed under the assumption that a land swap between the property owner and the City will occur. The land swap involves the abandonment of portions of Weller Lane, North Main Street and Railroad Court (totaling 8,940 sq. ft.) in exchange for City acquisition of the southeast corner of the existing parcel (6,165 sq. ft.) and portions of N. Main Street (1,857 sq. ft.). This property exchange would require the realignment of the streets and the associated utilities and street improvements. After the exchange the project site would be approximately 1.83 net acres (2.23 gross acres which includes area of adjacent streets to centerline as per General Plan definition of gross acres and density).

Use Permit. The original Use Permit approval allowed exceedance of building height, setback and number of stories. The applicant is requesting an amendment to the Use Permit to remove those allowances and to add the allowance of not providing 27 parking spaces required by the zoning ordinance for guest and retail parking and to exceed the minimum and maximum building setback along the north property line due to the realignment of Railroad Court.

Density Bonus. The applicant is seeking an amended density bonus approval to exceed the maximum density (40 units per acre) allowed under the multifamily very high-density land use designation by 7 units. The amendment would result in a density of 43 units per acre whereas the original approval would have resulted in a density of 46 units per acre. The applicant intends to meet the State and City Density Bonus regulations by making 20% of the units affordable to lower income households. The minimum percentage required by Density Bonus law is 20% of the total units allowed by the zoning district. Units above this amount can all be market rate.

ISSUES

The following sections address the proposed modifications to the project and any issues associated with them. Since this project has not yet been constructed any new or modified conditions that result from the project amendments have been incorporated into the previously approved conditions and included in the final recommended Special Conditions at the end of this report.

“S” ZONE APPROVAL AMENDMENT

As per Section 42.02, the City’s zoning code requires “S” Zone Approval Amendments to be consistent with the zoning ordinance, consistent with the General Plan and that the layout of the site and design of the proposed buildings, structures and landscaping are compatible and aesthetically harmonious with adjacent and surrounding development. Therefore, discussion of the modifications to the original “S” Zone Approval application are discussed below.

Building Architecture

The *overall* architectural design of the mixed-use development remains the same as originally approved. Modifications include the inclusion of the trash enclosure on the north elevation and the garage entrance on the west elevation. Other minor revisions include the replacement of the plank siding with stucco material for the pop-out features, addition of stone veneer for the entire retail facades, redesigned garage entry and exit and a reduction in the amount of retail façade on the west elevation. Staff concludes that the changes are appropriate and complement the building however, *staff recommends* enhancement of the garage entry and exits, especially the entry on the west elevations, perhaps with some sort of decorative adornment or projection and details of the trash enclosure when redesigned (see Solid Waste section).

The applicant did not address several design issues from the original approval with the amended project. These issues include the roofline, garage entry design, interior courtyard elevations, details of decorative elements and staff has carried over those conditions to this amendment.

Landscaping

The landscape modifications required from the original approval are also included in the conditions of approval since not all were not addressed in the revised plan. In addition, *staff recommends* another condition to relocate the planter along Weller Lane further north against the building's frontage, similar to the other planters. The plan had originally proposed to bisect the sidewalk with a planter area in order to provide a screened walkway for the commercial trash to be hauled out of public view to the trash enclosure. However, since the trash enclosure has been relocated to the north, this screened pathway is no longer needed and locating the landscape area flush with the building would match the other elevations as well as provide better screening for the utilities in the planter.

Streetscape

As per Policies 5.4 and 5.5 of the Midtown Specific Plan a uniform streetscape improvement (sidewalks, trees with grates and guards, pedestrian lights, benches, trash receptacles, etc.) are required for parcels along Main and Abel Streets and Great Mall Parkway. Although the plans do not indicate any changes from the previous approved streetscape plan (other than reduction in paving treatment for retail areas) the City has made significant progress with the design and details for the streetscape improvements, which should be finalized prior to construction of this project. Therefore, a streetscape improvement plan that is consistent with the final design and details will need to be submitted to the city for review and approval prior to building permit issuance. The cost of maintenance of these improvements will be borne by the applicant through participation in a future landscape and lighting district that will fund the City's cost to consistently maintain the improvements.

Staff has carried over previously approved conditions, such as continuing the streetscape along Railroad Court. In addition, *staff recommends* new conditions to extend the streetscape on the north side of Weller all the way to the east property line which shall match the library streetscape design and details on the south side of Weller and require the paving material proposed in front of the residential lobby to compliment the paving material to be used for sidewalk and street for the library on both sides of Weller Lane.

Parking

Pursuant to Section 38.06 (MXD Zoning, Off-Street Parking) of the Zoning Ordinance, the total parking requirement for the project is 205 parking spaces and is summarized in the table below. The project proposes a total of 179, 10 of which are on-street spaces. The parking garage contains a total of 169 parking spaces, 38 of which are tandem stalls and 68 are compact. This is consistent with Zoning Ordinance, which permits the use of tandem spaces for residential units that require 2 or more parking spaces and compact spaces for up to 40% of the residential parking requirement.

The majority of the retail parking, 10 of the 12 required (see Use Permit section), is proposed on N. Main Street along the building's street frontage. On-street parking along a building's street frontage can be counted towards a development's overall non-residential parking requirement. In addition to the 2 retail spaces not provided, the applicant is requesting approval not to provide the 25 parking spaces that are required for guests (see Use Permit section). In addition to the vehicular parking spaces, residential uses in the "MXD" district are required to provide bicycle

parking - 5% of total residential plus guest automobile spaces required. Ten bicycle spaces are required and is *staff recommending* these be incorporated into the plans and located at street level and in the parking garage.

Parking Standard	Required Stalls	Proposed Stalls	Complies?
Residential: <input type="checkbox"/> 1 bd. = 1.5 covered stalls <input type="checkbox"/> 2 bd. = 2.0 covered stalls <input type="checkbox"/> 3 bd. = 2.0 covered stalls	<input type="checkbox"/> (48) 1 bd. = 72 <input type="checkbox"/> (39) 2 bd. = 78 <input type="checkbox"/> (9) 3 bd. = <u>18</u> 168	169	Yes
Guest Parking – 15% of total residential	25	0	No, see page 10
Bicycle - 5% of total residential, plus guest	10	10	Yes
Retail – 1 / 250 SF	12	<u>10</u>	No, see page 10
TOTAL	205	179	No

Open Space

All residential developments in the Midtown area are required to provide park and open space at a ratio of 3 ½ acres per 1,000 population. As per Section 38.07-1, up to 43% of the public park and open space requirement may be provided in the form of private recreational space, which would include on-site usable common areas or private open space. Based on the reduction of units from 102 to 96 the development would be required to provide the following:

.54 public acres
.36 private acres
.94 acres total park acres

The public acres would be satisfied with the payment of a park-in-lieu fee. Midtown Specific Plan Policy No. 3.25 allows an applicant to provide for the improvement of trails designated in the City's Trail Master Plan. The project is in close proximity to Wrigley Creek, which is proposed for trail development since it costs the City approximately \$417,450 to improve one acre of trail, this figure has been used to establish the project's park in-lieu fee for public park acres, which is calculated to be \$226,385 based on the revised unit count. The 15,682 sq. ft. of private open space required on-site would be met with the previously approved on-site amenities including the interior courtyard (19,274 sq. ft.), fitness room (530 sq. ft.) and the community meeting room (530 sq. ft.).

Solid Waste

The project originally proposed a trash enclosure with compactors at the southeastern portion of the property at street level for BFI collection to occur. However, due to the location of the library parking garage and site layout the trash enclosure has been relocated to the northeast portion of the property, east of the garage exit. The applicant proposes 10 front load bins for both solid waste and recycling which would require BFI service at least 5 days per week, taking approximately an hour each day to service all of the bins. It would also require the BFI truck to park on Railroad Court blocking the street for a considerable amount of time in order to stage the bins and perform front load service for each. Staff concludes that this type of service has considerable impacts on the street and tenants residing near the north end of the property.

In order to reduce the above impacts, *staff recommends* the use of compactors for both trash and recycling. In order to accommodate compactors, the 8foot tall proposed enclosure with a peaked roof would need to have a height clearance of at least 10 feet in order to be accessed by BFI to load the compactors onto a truck bed. This would result in a taller enclosure that would be just below the residential windows above it. To address this issue *staff recommends* modifying the roof type, peaked to flat, and submerging the trash enclosure 1 foot below grade, in order to further increase the distance between the trash enclosure and the units windows. Not only would this reduce the odor impact on the residential occupants it would also enhance the appearance of the enclosure by reducing its mass and more appropriately scaled to the building. Staff also recommends the addition of a landscape area on the west side of the enclosure to assist in screening the enclosure, which would be visible from Railroad Court and N. Main Street.

Operations and maintenance of the solid waste and recycling for the development would remain the same. Within the podium two trash collection areas would be serviced by a chute system that handles solid waste accessible from all 3 residential floors. Each floor would also contain a recycling collection area (next to trash chute) which would be collected by management and carried down to the recycling compactor on a routine basis. Solid waste collected from the two garage enclosures in the podium would be transferred by the property management to the compactor at the street level for pick-up by BFI, approximately once every two weeks, depending on the volume.

Previously *recommended conditions by staff* have been carried over from the original approval such as providing detailed elevations for the enclosure, no tallow generating businesses permitted for the retail and all three trash enclosures shall be required to connect and drain to the sanity sewer.

Traffic and Impacts

A revised traffic study was performed by Hexagon Transportation Consultants that addresses the reduction in unit count from 102 to 96 and the revisions to the garage entrance and circulation. It was estimated that the revised project would generate 66 trips during the AM peak hour and 81 trips during the PM peak hour (82 AM Peak and 95 PM peak hour trips). The study concluded that the aforementioned projected trips would continue to degrade the level of service at the unsignalized intersection of Main and Carlo to an unacceptable LOS E (Level of Service). The City's LOS standard is D. The intersection of Abel and Calaveras, a Congestion Management Program (CMP) intersection, was also projected to degrade to a LOS E, however LOS E is an acceptable level of service for a CMP intersection. Mitigation for this impact is the payment of a

Traffic Impact Fee, which has been included as a condition of approval and modified to reflect the decrease in peak hour trips. In addition, the acquisition of portions of Weller Lane, North Main Street and Railroad Court will require physical improvements to these intersections which are included in Engineering Department's conditions of approval and will be determined as part of the proposed land swap. No on-site circulation issues were identified as a result of the reconfigured garage layout.

The study concludes that the relocation of the garage entrance would allow for adequate site access due to the low volumes and slow vehicle speeds on N. Main Street. The consultant suggests several minor modifications that would assist in enhancing maneuverability of the site entrance, which **staff recommends** as conditions of approval and lists below:

- ❑ Clearly marking the directionality of each driveway with appropriate signage and striping;
- ❑ Relocate street parking space number 8 to the north of the garage entrance and stripe this area (15 feet) for no parking to allow an adequate right turn radius off of northbound N. Main Street into the garage; and
- ❑ Deepening the throat of the garage entrance while maintaining a 25-foot interior drive aisle and moving back the security gate to allow for the queuing of 2 vehicles, approximately 40 feet.

Noise and Vibration Impacts

An acoustical study was prepared as part of the original application that analyzed the external and internal noise levels for the proposed project. In order to bring the interior noise levels to acceptable levels, the study recommended specific window, door and wall ratings, which staff incorporated as conditions of the original approval. The noise report found the interior courtyard (external levels) to be within allowable noise levels.

At the Commission's request, the applicant recently submitted a vibration analysis to determine if the Union Pacific Railroad line that runs immediately east of the subject site would have an impact on the apartment building 43 feet away. Since the railroad line is currently not in use the consultant referenced a Caltrans Vibration standard and determined that the maximum vibration level would be above the threshold of perception, however well below the architectural damage risk level and below the vibration limit for historical building. The report concludes that only a very light vibration may be perceived within the building and would be insignificant. However, since this assessment was based on the Caltrans standard, **staff recommends** a site-specific analysis be performed prior to final design or construction plans. If at the time there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating.

Conformance with the General Plan

The proposed project does not conflict with any General Policies, and is consistent with Land Use Implementing Policies 2.a-I-2 (Growth and Expansion) and 2.a-I-12 (Residential Development), which promote in-fill development rather than providing costly expansion outside the urban service area and encourages new residential developments that provide a variety of and mix in housing types and costs. The project is in compliance with these policies in that it is

proposing a range of residential rental units in terms of size and cost and would be located within the already built environment.

Conformance with the Zoning Ordinance

The project, as amended, continues to be consistent with the Mixed Use “MXD” and Transit-Oriented-Development “TOD” overlay district of the Milpitas Zoning Ordinance. The “MXD” zoning district encourages a compatible mix of residential and retail uses within the framework of a pedestrian-oriented streetscape. The “TOD” overlay district allows for increased densities and intensities around and near transit stations in order to provide goods and services within a convenient walking distance. In addition, it encourages attractive residential and commercial environments that provide for a desirable transition to the surrounding conventional area.

As previously demonstrated the originally approved project complied with the majority of the “MXD-TOD” zoning ordinance development standards with the exception of setbacks, height and stories which are permitted deviations allowed with a use permit. The amendments proposed actually bring the project into further conformance by reducing the overall height below the maximum of 60 feet and reducing the number of stories to the maximum of 4. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding development, both existing and future (library).

Conformance with the Midtown Specific Plan

In addition to the Site and Architectural Amendment Review (“S” Zone Amendment Review) in accordance with Section 42.10 of the Zoning Ordinance and conformance with the General Plan, projects within the Midtown area need to demonstrate compliance with the Specific Plan, which is part of the General Plan – including Midtown Development Standards and Design Guidelines. As demonstrated in the “S” Zone section of this report, the proposed amendments comply with the development standards, with the exception setbacks and parking discussed in the Use Permit section that follows. In addition, staff has reviewed the policies and design guidelines of the Midtown Specific Plan and has determined that the project, as amended and conditioned, remains consistent with the intent, requirements and policies of the Specific Plan.

USE PERMIT AMENDMENT

Pursuant to Section 43.09 (Exception to Standards) of the “MXD-TOD” district, exceptions to certain development standards may be approved by the Planning Commission through the approval of a Use Permit in accordance with Section 57 (Use Permits) of the Zoning Ordinance. The applicant is seeking a Use Permit amendment to exceed the minimum and maximum building setbacks and for a parking reduction of 27 parking spaces. The proposed building would exceed the minimum 8-foot and the maximum 15-foot building setback for the “MXD-TOD” district along the Railroad Court frontage (proposes 6-30 foot building setback from back of sidewalk). A unique northern property line results from the land swap and realignment of the Railroad Court and N. Main Street intersection. Rather than shape the building to conform to the new curved north property line and create odd-shaped, unusable space to meet the setback requirement, staff supports the setback deviation.

The applicant is also seeking a parking reduction to not provide 27 parking spaces (2 for the retail and 25 for guests). The parking garage would accommodate all of the required parking for

the residential units, however not the guest and the 2 additional retail spaces required by the zoning ordinance. There will be adequate parking within the vicinity to accommodate the guests and retail customers based on the following:

- On-street parking is permitted on both sides of Weller Lane (west of N. Main St.), and on the east side of N. Main Street and Marilynn Drive. Some of these parking areas are currently used by VTA bus users who park their cars and commute by bus. However, the majority of these bus lines will be relocated to the new Great Mall Transit Center in June of this year and the street parking in this area is anticipated to significantly decline and thus become available for guests and retail customers. In addition, the staging area where buses line up near the bus shelters will no longer be needed for bus queuing and staff will work with the VTA to convert these areas and make available for parking.
- The City will be constructing a new 3-story parking garage with approximately 350 spaces immediately south of the Apton project. This garage is providing parking for the library but could also serve as overflow parking for adjacent uses in the vicinity and for public events. In addition, the 3,000 sq. ft. retail use proposed in the southeast corner of the project is intended to serve both pedestrians from the library and residents of the development, which could create less demand for the on-street parking spaces.

Staff concludes that there will be sufficient available on-street parking for the project when completed and a considerable amount that would be available in the future once the library garage is constructed.

The proposed Use Permit for the increase in building story and reduction of a setback is discussed in the "S" Zone Approval Amendment section of this report as part of the overall review of the building and site. Consistent with the "S" Zone findings, as conditioned, the parking reduction and exceedance of setbacks are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public. Therefore, as conditioned, the proposed exceptions to the "MXD-TOD" development standards will not negatively impact the surrounding community.

In addition to the required finding under Section 57, the following two additional findings for Midtown exceptions are required:

1. The exceptions meet the design intent identified within the Specific Plan and do not detract from the overall architectural, landscaping and site planning integrity of the proposed development; and
2. The exceptions allow for a public benefit not otherwise obtainable through the strict application of the specified standard.

With regard to the exceedance of building setbacks, staff concludes that setback deviation would provide for a more uniform shaped building rather than have the building conform to the new curved north property line and create odd-shaped, unusable space. In addition the increased setback areas allow for more and denser landscaping opportunities and an improved streetscape on Railroad Court. The use permit amendment for the parking reduction allows for the utilization of smart growth trends while providing an increased density and more affordable units.

DENSITY BONUS

California Government Code Section 65915 (implemented through Section 54.20 – Density Bonus sub-section of the Zoning Ordinance) requires the City to provide incentives or concessions when an applicant agrees to one of the following ways to provide affordable housing. In all cases, the percentage of units does not include the additional units allowed through a density bonus.

1. Reserving 10% of the units for very-low income households (50% of County median income).
2. Reserving 20% of the units for low-income households (80% of County median income).
3. Reserving 20% of the units within a condominium project for moderate-income households (120% of County median income).
4. Reserving 50% of the units for senior housing.

The 2004 median income for Santa Clara County is \$105,500 for a family of four. The incentives or concessions the City can grant include:

A) An increase in density of at least 25% or less if elected by the applicant and one of the following:

- A reduction in site development standards.
- Approval of mixed use zoning in conjunction with the housing project.
- Anything else that results in an actual cost reduction for the project.

B) Other incentives of equivalent financial value based upon the land cost of the dwelling unit.

The applicant has agreed to reserve affordable units as shown below to meet the density bonus requirements and Midtown Specific Plan Policies 3.5 and 3.6.

Income Level	No. of Units	Unit Type
Very Low	9	7-one bedroom & 2-two bedroom units
Low	10	5-one bedroom & 5-two bedroom units
Total	19	

The nine units reserved for very-low income households (10% of the 89 units allowed under the multi-family high land use designation) qualify the project for a density bonus. Therefore, the project as amended, proposes 96 units, 7 units more than allowed under the existing land use designation and the applicant requests the following deviation from the MXD-TOD Development Standards as a concession:

1. Varying of building setback on Railroad Court from a minimum of 6 feet and a maximum of 30 feet.

VACATION OF PUBLIC-RIGHT-OF-WAY

As previously discussed, this development proposal involves a land swap that incorporates the partial vacation of public right-of-ways: Weller Lane, North Main Street and Railroad Court. Vacations of public rights-of-way and acquisition of land require a City Council public hearing and adoption of a resolution of vacation and a finding that the vacation and land acquisition are not in conflict with the General Plan. As previously mentioned, minor adjustments have been made to the land swap area (see land exchange concept plan on Sheet A1.0) and as a result the City would be acquiring a total of 8,022 sq. ft. and the applicant would acquire a total of 8,940 sq. ft.

Conformance with General Plan

Weller Lane is a local street and its width at the intersection of Main Street is wider than is necessary for proper functioning of a local public street. In fact, the paved area within this right-of-way is wider than the necessary driving lanes and turn lanes making it confusing to motorists. Therefore, reduction in the width of the right-of-way is a public benefit while not lowering the level of service of the street and allows for realignment and construction modifications and improvements to Weller Lane. Regarding the partial vacation of portions of North Main Street, this intersection with Railroad Court has an odd design since it does not incorporate right angles, which when reconfigured, provides a safer turn for trucks and typical sized vehicles alike. In addition, the squaring off of the street and cornering of this area creates a proper intersection that aligns with the private street of Images Circle directly across N. Main Street. For these reasons the proposed vacations and amended land swap acquisitions are in conformance with the General Plan Circulation Element.

Environmental Review

A Negative Declaration (EIA No. EA2003-1), a statement briefly describing the reasons that the proposed project will not have a significant effect on the environment, was completed for this project and adopted by the City Council on July 1, 2003. A statement of conformance was attached to the Negative Declaration that indicates the project is in conformance with the previously approved Milpitas Midtown Program EIR. The Program EIR provided mitigation measures for Air Quality, Biological Resources, Hazardous Materials, Cultural Resources, Traffic, and Utility impacts. Of these mitigation measures, only the traffic mitigation from the Midtown EIR will be applicable to this project and will be included as a condition of approval. The amendments to the project will not result in any environmental impact not already considered in the adopted Negative Declaration.

Neighborhood Outreach Meeting

On Monday, March 17, 2003 the developer and architect of Apton Plaza Development presented their original project proposal to the public. Residents and occupants within 300 feet of the subject site were invited and several of the residents attended the meeting, in addition to City staff. There were no concerns with the project expressed by the public in attendance. Staff concludes that the public hearing for the amendments would serve as an adequate venue for questions by the neighboring residents or concerned citizens regarding the project's modifications.

RECOMMENDATION

Close the Public Hearing and take the following actions based on the Findings and Special Condition of Approval listed below:

- A) Recommend to the City Council approval of the Density Bonus, “S” Zone Approval Amendment No. SA2004-7 and Use Permit Amendment No. UA2004-2.
- B) Find the partial vacations of Weller Lane, North Main Street and Railroad Court and the acquisition of 8,022 SF are not in conflict with the General Plan.

FINDINGS

1. The amendments to the approved project will not create any environmental impacts not already considered in the Negative Declaration (EIA No. EA2003-1) adopted by the City Council on July 1, 2003.
2. The project, as conditioned, is consistent with the General Plan and in compliance with policies 2.1-I-2 (Growth and expansion) and 2.a-I-12 (Residential Development) in that it is proposing a range of residential rental units in terms of size and cost and would be located within the already built environment.
3. The project, as amended and conditioned, continues to be consistent with the Mixed Use “MXD” and Transit-Oriented-Development “TOD” overlay district of the Milpitas Zoning Ordinance. The amendments proposed actually bring the project into further conformance by reducing the height below the maximum of 60 feet and reducing the number of stories to the maximum of 4. In addition, the minor building and site modifications are compatible and aesthetically harmonious with the overall approved project and the surrounding development, both existing and future (library).
4. The proposed vacations are in conformance with the General Plan Circulation Element in that the reduction in the width of the right-of-way and the realignment of North Main Street at Railroad Court and the creation of an intersection are public benefits and do not negatively impact the level of service of the streets.
5. The proposed Use Permit for the exceedance of the setbacks and a parking reduction for 27 spaces are not anticipated to have any adverse impacts on parking, traffic, noise, odors, or be detrimental to the health and safety of the public and therefore, will not negatively impact the surrounding community.
6. The proposed Use Permit for exceedance of setbacks and a parking reduction for 27 spaces provide public benefits of a more uniform building and greater landscape and street opportunities and utilization of smart growth trends while providing an increased density and more affordable units.

SPECIAL CONDITIONS

- 1) APPROVAL. This “S” Zone Approval Amendment No. SA2004-7 is for the final design of a 4-story, mixed use residential and retail development consisting of 96 rental living units and approximately 3,000 square foot of retail lease space in accordance with the plans approved on May 26, 2004, and as amended by the conditions below. Any modification to the project

as proposed will require an "S" Zone Approval Amendment by the Planning Commission. Minor modifications can be submitted to the Planning Division for processing as per Section 42.10 of the zoning code. (P)

- 2) APPROVAL. This Use Permit Amendment No. UA2004-2 is for exceedance of building setbacks along the portion of the north property to range from 6-30 feet and for a parking reduction of 27 spaces (2 retail and 25 guest). Any modification to the project as proposed will require a Use Permit Amendment by the Planning Commission. (P)
- 3) GENERAL. The applicant shall comply with Planning Commission Resolution No. 168, a resolution of standard conditions for commercial development. (Items #1-4, 9, 11 (P))
- 4) GENERAL. This use shall be conducted in compliance with all appropriate local, state, and federal laws and regulations, and in conformance with the approved plans. (P)
- 5) RETAIL. No tallow generating businesses shall be permitted to occupy the retail tenant spaces. (P)
- 6) PARK FEES. Prior to certificate of occupancy issuance, the applicant shall pay a park-in-lieu fee in the amount of \$226,385. (P)
- 7) TRAFFIC IMPACT FEE. Prior to building permit issuance, the applicant shall contribute a "fair share" traffic impact fee in the amount of \$18,183 (based on a Midtown impact fee of \$113 per peak hour trip and a Montague Expressway impact fee of \$903 per peak hour trip). (P, T)
- 8) PJ ACCOUNT. If at the time of application for building permit, there is a past due project job account balance owed to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 9) PJ ACCOUNT. If at the time of application for certificate of occupancy there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full. (P)
- 10) DENSITY BONUS. The City shall implement Section 54.20-3 (A-2) (Density Bonus) with respect to affordable housing incentives which shall include a bonus of 7 dwelling units above the 89 units allowed in "MXD-TOD" district and a concession involving a setback deviation of the building along Railroad Court. The total of 96 rental apartments shall be provided in the residential development. (P)

- 11) **AFFORDABILITY.** Prior to the issuance of any building permits, the applicant shall enter into a Regulatory Agreement securing 19 units (shown in the breakdown below) as affordable to low and moderate-income households for a period of 55 years. Income eligibility and the rental rates for these units shall be determined pursuant to California Health and Safety Codes Sections 50079.5, 50093 and 50105. (P)

Income Level	No. of Units	Unit Type
Very Low	9	7-one bedroom & 2-two bedroom units
Moderate	10	5-one bedroom & 5-two bedroom units
TOTAL	19	

- 12) **AFFORDABILITY.** Prior to the issuance of any building permits, the applicant shall provide a dispersement plan illustrating the location of the affordable housing units within the development to the approval of the Housing Division. The affordable housing units shall be dispersed equally throughout the development and shall contain the same architectural features, design and amenities as the fair market rate units in the development. (P)

- 13) **BUILDING ELEVATIONS.** Prior to building permit issuance, the applicant shall revise the elevations in order to address the following concerns and suggestions to the approval of the Planning Commission Subcommittee:
- East elevation: indicate how far vertical elements project from building; and redesign the change roof height created by the odd roofline.
 - North elevation: enhance the garage exit feature by possibly adding a projection rather than flush, recess or adorn it; modify trash enclosure by submerging 1 foot underground change roof type from peaked to flat to reduce overall height.
 - West elevation: enhance the garage entry feature by possibly adding a projection rather than flush, recess or adorn it.
 - Interior courtyard elevations: the north and south interior elevations, proposed as interior walkways with blank exterior walls, require windows and other treatments to make their elevations interesting and complementary to the building style (elevations required).
 - All elevations: provide details or typical catalogue examples of all canopies, decorative metal bracing, railings, windows, and doors proposed in order to see how these elements meet the building, their thickness, material, color, etc.; to improve proportions of accent features, provide material samples of stone veneer and pavers, details of light fixtures and clocks. (P)

- 14) FLOOR PLAN. Prior to building permit issuance, the applicant shall submit a revised floor plan of the garage showing the following:
 - a) Clearly marking the directionality of each driveway with appropriate signage and striping;
 - b) Relocate street parking space no. 8 to the north of the garage entrance and stripe this area (15 feet) for no parking to allow an adequate right turn radius off of northbound N. Main Street into the garage and fire hydrant access;
 - c) Show the locations of the 10 required bicycle spaces within the garage and possibly some near residential lobby entrance;
 - d) Deepen the throat of the garage entrance while maintaining a 25-foot interior drive aisle and moving back the security gate to allow for the queuing of 2 vehicles, approximately 40 feet;
 - e) Clearly mark each parking space for the assigned unit (including the handicap space); and
 - f) Show card reader placement outside gate and provide security gate details. (P)
- 15) FLOOR PLAN. Prior to building permit issuance, the applicant shall submit a revised floor plan of the courtyard showing a more southern location of the children's play area. (P)
- 16) LIGHTING. Prior to building permit issuance, the applicant shall submit a lighting plan and details for light poles and other light fixtures to the Planning Division for review and approval. (P)
- 17) ROOFTOP EQUIPMENT. All rooftop-mounted equipment (HVAC, etc.) shall be screened from all views. (P)
- 18) SIGNAGE. Prior to the approval of any signage for the multi-tenant, mixed-use development, a sign program application shall be submitted for Planning Commission approval. (E)
- 19) IRRIGATION. Prior to building permit issuance, the applicant shall submit an irrigation plan for all landscape areas. (P)
- 20) LANDSCAPE. Prior to building permit issuance, the applicant shall submit a revised landscape & streetscape plan that includes the following:
 - a) Reduce the number of canopy trees in the courtyard and replace with equal number, if not more, trees of a species with a smaller canopy.
 - b) Relocate 6-foot wide planter strip that bisects the sidewalk along Weller Lane further north to be flush with the building, similar to the landscape planters along west and north elevations.
 - c) Add landscape area along west side of trash enclosure next to garage exit to screen the solid bare wall.
 - d) Add additional trees and shrubs around locations of utilities in planters along Weller and Railroad frontages to better screen utilities. (E)

- 21) LANDSCAPE/LIGHTING MAINTENANCE DISTRICT. Prior to building permit occupancy/final inspection, the developer shall form a Landscaping and Lighting Maintenance Assessment District (LMD) on the subject property, to fund the maintenance of landscaping and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, signs, garbage receptacles, decorative sidewalk pavement, planting and irrigation system, along N. Main Street, Weller lane and Railroad Court. The applicant will be required to pay for all operational & maintenance costs until such time as the City receives revenues from the proposed District. The developer shall also dedicate a landscape easement along its entire frontage on Weller Lane, N. Main Street and Railroad Court between the face of street curb and face of the proposed building. (E)
- 22) COMMUNITY MEETING ROOM. Prior to building permit issuance, details of the community meeting room will need to be verified by staff in order to determine if this amenity is substantial enough to receive private recreation credit with features such as a large screen television, couches and chairs, games tables, meeting space, kitchen, and vending machines that adequately serve the residents of development. (P)
- 23) LAND SWAP. This approval is conditioned upon the City Council adopting a Resolution of Vacation of portions of Weller Lane, North Main Street and Railroad Court and approving the land swap acquisition since this land is proposed to be incorporated into the project and noted in Engineering's Exhibit "S". Prior to building permit issuance, the Resolution of the partial vacations of Weller Lane, North Main Street and Railroad Court shall be recorded. (E)
- 24) LAND SWAP. Prior to building permit issuance, the applicant shall compensate the City for the fair market value of any net difference in land swap area that favors the applicant unless negotiated through a City approved financial assistance agreement. (P)
- 25) LAND SWAP. Prior to any permit issuance, the developer shall:
 - a) Successfully process an application through the City to vacate that portion of Weller Lane and N. Main Street as public streets as shown on the Engineering Services Exhibit "S", dated 5/1/2004.
 - b) Enter into a property exchange agreement with the City for the portion of Railroad Court, N. Main Street, Weller Lane, Winsor Street and the Southerly portion of the project site and a reimbursement agreement with the City for the developer to relocate and construct at the City's cost that segment of the existing storm drain system, as shown on the Engineering Services Exhibit "S", dated 5/1/2004. (E)
- 26) DEDICATIONS. Prior to any building permit issuance, the developer shall dedicate adequate right of way for street, public service utility and landscape easement purposes along North Main Street, Weller Lane and Railroad Court as shown on Engineering Services Exhibit "S", dated 5/1/2004. (E)
- 27) CONSTRUCTION STAGING. The developer shall coordinate its construction schedule and activities with the City's Library project. No portion of City's property within the proposed

library site will be available for construction staging without City's prior written approval.
(E)

- 28) ENCROACHMENT PERMITS. Prior to any work within public right of way or City easement, the developer shall obtain necessary encroachment permit(s) from City of Milpitas Engineering Division. (E)
- 29) FLOOD ZONE. Prior to any building permit issuance, the developer shall obtain a Letter of Map Amendment (LOMA) from FEMA to remove that portion of the project site that will become part of the property as part of the land-exchange with the City, from Special Flood Hazard Zone area. The underground parking structure as proposed is not permitted within the existing Special Flood Hazard Zone AH (elevation 12). (E)
- 30) GRADING PLAN. At the time of building permit plan check submittal the developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities including overland flow as shown on the existing federal flood map. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior any building permit issuance. (E)
- 31) GRAFFITI. The property owner shall continue to comply with the City's Neighborhood Preservation Ordinance regarding the public nuisance issue of graffiti on the site. Should graffiti become an issue again in the future, prior to demolition of the abandoned buildings, the property owner shall comply with City's standards of removal or the City shall take action to obtain a court order to enter the property and abate the graffiti. Legal costs, staff time and all other costs associated with resolving this matter will be passed on to the property owner. Contact Chris Schaller at (408) 586-3078. (P, NP)
- 32) PARCEL MAP. Prior to any building permit issuance, the applicant shall file and record a parcel map to remove the common parcel lines and combine the parcels into one parcel. Alternatively, the developer could process a lot line adjustment and record a Record of Survey if necessary. (E)
- 33) PARKING. No on-street parking will be permitted on Weller Lane between Winsor and N. Main Street. Applicant shall install any necessary no parking signs along that portion of Weller lane. (E)
- 34) PUBLIC IMPROVEMENTS. Prior to any building permit issuance, the developer shall:
- a) Make a payment to the City in Lieu of designing and constructing the required improvements along its frontage on Weller Lane (construct 30 foot maximum width street) and intersection improvements at N. Main and Weller, including but not limited to curb and gutter, pavement, decorative lighted smart crosswalk, sidewalk, relocating underground utilities (water, sewer, and storm drain line) and providing utility laterals, Fire hydrant and fire service connections to serve this project, decorative curb bulb-out at intersection with flush curb & protective bollards, street tree planting, signage and striping, signal modification, street lights, pedestrian lighting and tree well grates, except

undergrounding/relocating of the existing overhead utilities. The developer's obligation for payment in Lieu of designing and constructing the required improvements is set at a maximum of \$652,856. The developer is also required to coordinate its dry utilities (phone, electric, gas, cable, etc.) construction with Library project and other affected agencies including but not limited to PG&E.

- b) Obtain design approval and bond for all necessary public improvements along N. Main Street and Railroad Court, including but not limited to curb and gutter, pavement, sidewalk, undergrounding of existing overhead utilities, street tree planting, signage and striping, bus stops, street lights, relocation of existing water, storm drain and sewer main lines and other utility relocation and modifications, fire hydrants, storm drain, sewer and water services, and street furniture improvements such as benches, pedestrian lighting, bike shelter/rack, tree well grates, and garbage receptacles along N. Main Street, and Railroad Court, as further shown on Engineering Services Exhibit "S", dated 5/1/2004. The applicant shall construct subject improvements prior to building occupancy permit issuance. These required improvements shall comply with the City's Development standards and Design guidelines and Streetscape plans approved for Milpitas Midtown Specific Plan. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The Vertical Control shall be based on NGVD 29 and Horizontal Control based on CCS83. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. (E)

35) STORMWATER. Implement standard best management practices (BMPs) for the control of erosion during the temporary stockpiling of excavated soils with fiber rolls and installing sand or gravel bags to minimize runoff impacts to halt runoff from entering the storm drainage system. (P)

36) STORMWATER. During all construction activities on-site, the project applicant/developer shall adhere to the following Best Management Practices as suggested by BAAQMD:

- a) Watering all active construction areas twice daily and more often during windy periods. Active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
- b) Cover all trucks hauling soil, sand and other loose materials or require all trucks to maintain at least a 2 feet freeboard level within their truck beds;
- c) Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.
- d) Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites;
- e) Sweep streets daily with water sweeper if visible soil material is carried onto adjacent public streets;

- f) Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for 10 days or more);
 - g) Enclose, cover, water twice daily or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
 - h) Limit traffic speeds on unpaved areas to 15 mph;
 - i) Install sandbags or other erosion control measures to prevent silt runoff to public roadways;
 - j) Plant vegetation in disturbed areas as quickly as possible;
 - k) Suspend excavation and grading (all earthmoving or other dust-producing activities) or equipment during periods of high winds when watering cannot eliminate visible dust plumes. (P)
- 37) STORMWATER. Prior to any permit issuance, the applicant shall submit a storm water control plan for the entire site including the courtyard that to the extent feasible, designs the project facilities to incorporate design concepts recommended in the Bay Area Stormwater Management Agencies Association's "Start at the Source" Design Guidance Manual for Stormwater Quality Protection (BASMAA 1999), including, but not limited to fossil filters, grading of impervious areas to landscaping and roofs draining to landscaped areas. (P)
- 38) STREETSCAPE. Prior to building permit issuance, the applicant shall submit a revised streetscape plan to the approval of the Planning Commission Subcommittee with the following revisions:
- a) Continue the streetscape design and details proposed on N. Main Street and Weller Lane to the Railroad Court frontage.
 - b) Continue the streetscape design and detail along the entire length of Weller to east property line, which shall correspond to the library streetscape on the south side of Weller.
 - c) Paving material proposed in front of residential lobby shall compliment/match the paving material to be used for sidewalk and street for the library streetscape. (P)
- 39) TRASH ENCLOSURE. Prior to building permit issuance, the applicant shall submit elevations for the exterior trash enclosure, which note material and colors and the following modifications:
- a) Show 25-yard compactors for both trash and recycling;
 - b) Modify the roof type, peaked to flat, and submerge the trash enclosure 1-foot below grade for a total 10 feet clearance in height; and
 - c) Addition of a landscape area on west side of the enclosure to assist in screening the enclosure, which would be visible from Railroad and N. Main. (P)
- 40) TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with BFI for both commercial and residential use:

- a) Maintain an adequate level of service for trash collection.
- b) Maintain recycling services including separate services for beverage containers.

After the applicant has started its business and building is occupied, the solid waste service shall be evaluated by BFI commercial representative to determine the adequacy of the service level. If it is found to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234. (E)

- 41) TRASH ENCLOSURE. Prior to occupancy permit issuance, the applicant shall construct trash enclosure(s), for Solid Waste Services. City Engineer review and approval is required prior to construction of the trash enclosure. The proposed trash enclosure must meet the BFI criteria to support self-contained, roll-off compaction equipment for separate recycle and trash services, as stated on the attached Exhibit "A". (E)
- 42) TRASH MAINTENANCE. The trash bins and trash/recycling enclosure areas shall be kept clean by double-bagging garbage and by frequent sweeping and disposal of any spilled solid waste. (P)
- 43) TREE REMOVAL. Prior to any protected tree (36-inch circumference or larger) removal, the applicant shall obtain a tree removal permit from the Trees and Landscape section of Public Works Department. (P)
- 44) UTILITIES. Prior to building permit issuance, the plans shall indicate all the aboveground utilities on Weller Lane (except fire equipment which will remain in the landscape planter again south façade) to be relocated to a common area near the southeast corner tower. The plans shall include details of proper screening of the equipment without precluding rear building access. (E)
- 45) UTILITIES. All existing on-site public utilities shall be protected in place and if necessary relocated as approved by the City Engineer. No permanent structure is permitted within City easements. (E)
- 46) UTILITIES. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)
- 47) UTILITIES. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval. (E)

- 48) UTILITIES. Prior to issuance of any building permits, developer shall obtain approval from the City Engineer of the water, sewer and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer. (E)
- 49) UTILITIES. Multistory buildings as proposed require water supply pressures above that which the City can normally supply. Additional evaluations by the applicant are required to assure proper water supply (potable or fire services). The Applicant shall submit an engineering report detailing how adequate water supply pressures will be maintained. Contact the Utility Engineer at 586-3345 for further information. (E)
- 50) UTILITIES. Prior to building occupancy permit issuance the developer shall underground all existing wires on the utility poles number 1 to 5, and remove poles number 2, 3, 4 and 5, as shown on the Engineering Services Exhibit "S", dated 5/1/2004. All proposed utilities within the proposed development shall also be undergrounded. (E)
- 51) VIBRATION STUDY. Prior to building permit issuance, the applicant shall submit to the Planning Division a site specific vibration analysis addressing the vibration impacts from the adjacent Union Pacific Railroad tracks from a qualified acoustical consultant. If at the time of final design there is still no train running on the track closest to the project a sample will need to be taken from the other track that runs immediately east and adjacent to the subject track which the City is positive is operating. (P)

Planning Division = (P)

Engineering division = (E)

Transportation Division = (T)

Neighborhood Preservation = (NP)

MEMORANDUM OF UNDERSTANDING
(Apton Plaza)

THIS MEMORANDUM OF UNDERSTANDING is entered into by and between the Redevelopment Agency of the City of Milpitas, a public body, corporate and politic (hereinafter "Agency") and Apton Properties, L.L.C., a California limited liability company (hereinafter "Participant") (collectively the "Parties").

RECITALS

WHEREAS, Participant is the property owner of that real property located at 230 North Main Street, Milpitas, more particularly described in the legal description attached hereto as Exhibit A attached herein and incorporated herein by this reference ("the Property").

WHEREAS, Participant intends to develop a mixed-use project on the Property that consists of approximately 96 residential units ("the Project").

WHEREAS, this MOU sets forth the Parties' agreement with respect to Participant's affordable housing obligations with respect to the Project and further sets forth additional conditions for the development of a housing project on the property and the rights and duties of the Parties respectively.

WHEREAS, this MOU will result in the construction of 19 affordable housing units.

WHEREAS, the Parties intend to enter into an Owner Participation Agreement ("OPA") at a later date that will incorporate the terms of this MOU, set forth additional conditions for the development of the Project, and be recorded against the Property.

WHEREAS, this MOU, the OPA, and the construction of the 19 affordable housing units are intended to satisfy the requirements of the Housing Element Policy C-I-2 of the Milpitas General Plan and the Agency's obligations under the Community Development Law with respect to the creation of affordable housing.

WHEREAS, in the event of conflict between the terms of the OPA and the terms of this MOU, this MOU shall control on the point of conflict.

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein and other good and valuable consideration the Parties understand and agree as follows:

I. AGENCY FINANCIAL ASSISTANCE:

The amount of the Agency Financial Assistance to the Project detailed below is based on the Agency's estimate that the assessed valuation of the Project (land and improvements) will exceed Twenty-Two Million Four Hundred Ten Thousand Eight Hundred Eighteen Dollars (\$22,410,818). Should the estimated assessed valuation for Project not exceed this amount, Participant agrees that the Agency's obligation to provide the assistance set forth below shall be reduced in proportion to the assessed valuation for the completed Project.

1. The Agency agrees to pay on behalf of the Participant direct City of Milpitas ("City") costs related to the processing of zoning entitlements and construction permits for nineteen (19) deed restricted, rental apartment units ("Affordable Units"). This amount shall be equal to 20% of the total of such costs for the project as a whole, but shall not exceed Thirty Nine Thousand Eight Hundred Dollars (\$39,800).

2. The Agency agrees to pay on behalf of the Participant park in-lieu and traffic mitigation fees for the Affordable Units. This amount shall be equal to 20% of the total of such fees for the project as a whole but shall not exceed Forty Six Thousand Eight Hundred Dollars (\$46,800).

3. The Agency shall reimburse Participant for School Impact Fees for the Affordable Units in an amount. This amount shall be equal to 20% of the total of such costs for the project as a whole but shall not exceed Forty Three Thousand Nine Hundred Sixty Dollars (\$43,960). The Agency shall make the reimbursements within thirty (30) days of Participant providing Agency with evidence from the school district(s) that the School Impact Fees have been paid.

4. The Agency will provide a grant in the amount not to exceed Seven Hundred Twenty-Two Thousand Dollars (\$722,000) to the developer for the construction of the Affordable Units.

5. The Agency will provide a take-out loan in an amount not to exceed Three Hundred Seventy Eight Thousand Dollars (\$378,000) to the developer upon the completion of construction of the Affordable Units. The loan will be a 20-year fixed rate loan at an interest rate of 5.25% per annum, secured by the Property. The Agency agrees that its loan would be subordinate to other financing, provided such subordination is consistent with the Community Redevelopment Law.

6. Summary of Agency Assistance:

A. Total Potential Value of Agency Assistance - \$1,230,560.00

1. Value of Grants - \$852,560.00

a. Estimated Grants for 19 Affordable Units

Building Permit Fees (*)	\$29,600
Private Job Account (Staff Charges) (*)	\$10,200
Park In-Lieu (*)	\$43,000
Traffic Mitigation (*)	\$3,800
School Impact Fee (*)	\$43,960
Affordable Housing Assistance	\$722,000
(*) 20% of City Fees	
	<hr/>
	\$852,560

2. Estimated Value of Loans - \$378,000.00	
Affordable Housing Assistance	\$378,000
	<hr/>
	\$378,000

II. AFFORDABLE HOUSING IMPLEMENTATION:

1. The Participant shall provide nineteen (19) Affordable Units constructed on the Property, which shall be rented to Very Low and Moderate Income households as guaranteed by deed restrictions or other enforceable covenants running with the land. Nine (9) of the Affordable Units will be designated for Very Low-Income households. Ten (10) of the Affordable Units will be designated for Moderate-Income households. The terms "Very Low Income households" and "Moderate Income households" shall have the same meaning given those terms in the Community Redevelopment Law (Health and Safety Code, §§ 33000 *et seq.*) and Health and Safety Code section 50052.5.
2. Participant shall be required to submit to the Agency an initial Disbursement Plan that indicates the location of the Affordable Units within the development. The Disbursement Plan is subject to the approval of the Executive Director of the Agency, or his or her designee. However, the parties agree that the Affordable Units will be distributed throughout the development as conceptually shown on the Site Map and Preliminary Distribution Plan in Exhibit B attached hereto and incorporated herein by this reference. This Agreement contemplates that from time to time, Participant or its successor may designate different units than shown in the initial Disbursement Plan as Very Low Income or Moderate Income units. Such redesignation may be made provided the following conditions are met:
 - a. The total number of Very Low Income units shall at no time be less than nine (9), nor the total number of Moderate Income units shall at no time be less than ten (10) at any time.
 - b. The designated Affordable Units shall be dispersed throughout the project so that the distribution of the Affordable Units is substantially the same as shown in the initial Disbursement Plan; and
 - c. Participant or its successor shall notify the Agency in writing at least thirty (30) days in advance of any such redesignation. Unless the Agency rejects the Participant's proposal to redesignate any unit pursuant to this section within fifteen (15) business days of the notice, the redesignation shall be deemed to have been approved by the Agency. The Agency Executive Director may reject the redesignation if he or she determines, in his or her sole discretion, that the redesignation would result in a concentration of Affordable Units in any particular location within the project.
3. The Agency and Participant hereby declare their understanding and intent that the

burdens of the covenants set forth herein touch and concern the land in that the Agency's and Participant's legal interest in the Property is rendered less valuable thereby. The Agency and Participant hereby further declare their understanding and intent that the benefits of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Property by persons to whom the Affordable Units will be affordable, the future tenants of each Affordable Units ("Applicant(s)").

4. Upon completion of the Project, the Property shall be subject to the Regulatory Agreement in substantially the form set forth in Exhibit C. The Regulatory Agreement shall be recorded against the Property. Following recordation of the Regulatory Agreement as required hereunder, the Agency shall have the right to enforce the Regulatory Agreement and, upon default under any of the terms of the Regulatory Agreement, the Agency may take any one or more of the following steps, in addition to all other remedies provided by the law or in equity:
 - (1) Enforce the obligations under the Regulatory Agreement by mandamus or other suit, action, or proceeding at law or in equity; including injunctive relief, require the Owner, or any successor in interest, to perform its obligations and covenants under this Agreement or under the Regulatory Agreement; or, enjoin any act or thing that may be unlawful or in violation of the provision of this Agreement, the OPA, or the Regulatory Agreement; and
 - (2) Take such other action at law or in equity as may appear necessary or desirable to enforce the obligations under this MOU, the OPA, and the Regulatory Agreement against the Owner; and
5. Rents for Affordable Units shall be determined pursuant to the terms of the Regulatory Agreement.
6. The Agency shall develop a plan to qualify purchasers for rental of the Affordable Units and will be responsible for providing the Participant with a list of qualified Tenants, as set forth in the Regulatory Agreement. Participant agrees to use its best efforts to market the Affordable Units to the same extent and in the manner as those being developed on the Property that are not designated as Affordable Units. The certification and recertification of household size and income required by the Regulatory Agreement shall be administered by either the Agency, or by the Housing Authority of Santa Clara County, or some other entity as designated by the Agency pursuant to an agreement with the Agency.
7. This MOU may be executed in counterparts, all of which together shall constitute a single original agreement, so executed this MOU shall constitute an agreement which shall be binding upon all parties to the MOU, notwithstanding that the signatures of all parties do not appear on the same page.
8. This MOU, the OPA and the Regulatory Agreement shall run with the Property and be binding to the Parties hereto and their successors and assigns.

9. Either Party shall be deemed in default of this MOU when failing to substantially comply with any material term of this MOU. Failure to cure a default within 30 days' written notice provided to the defaulting party by the non-defaulting party shall result in immediate termination of this MOU and any development rights granted by the City as a result thereof.
10. If any term or provision of this MOU shall be held invalid or unenforceable, the remainder shall not be affected.
11. No waiver or breach of any covenant or provision shall be deemed a waiver of any other covenant or provision and no waiver shall be valid unless in writing and executed by the waiving party.
12. This MOU may be executed in one or more counterparts, each of which shall be deemed an original and all which taken together shall constitute one and the same instrument.
13. This MOU may not be amended or altered except by a written instrument executed by Agency and Apton Properties, LLC.

[EXECUTION PAGE FOLLOWS].

IN WITNESS WHEREOF, Agency has by order of the Agency Board of the Directors caused this Memorandum of Understanding to be subscribed by the Executive Director of the Agency by Resolution No. _____ and attested by the City Clerk thereof, and Apton Properties, LLC has executed the same this 12 day of May, 2004.

"AGENCY"

Redevelopment Agency of the
City of Milpitas

Thomas J. Wilson, Executive Director

Attest:

Gail Blalock, City Clerk

Approved as to Form:

Agency Counsel

Apton Properties, L.L.C.

By:

Badr M. Valani

Its:

Manager

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Preliminary Distribution Plan

EXHIBIT C

REGULATORY AGREEMENT FOR AFFORDABLE RENTAL UNITS

RESOLUTION NO. RA

**A RESOLUTION OF THE MILPITAS REDEVELOPMENT AGENCY APPROVING THE
EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH APTON PLAZA, LLC.**

WHEREAS, the City Council of the City of Milpitas originally approved and adopted the Redevelopment Plan (the "Redevelopment Plan") for the Milpitas Redevelopment Project No. 1 (the "Project") on September 21, 1976, by Ordinance No. 192 and amended on September 4, 1979, by Ordinance No. 192.1; on May 4, 1982, by Ordinance No. 192.2; on November 27, 1984, by Ordinance No. 192.3; on December 9, 1986, by Ordinance No. 192.4; on April 16, 1991, by Ordinance No. 192.6A; on December 9, 1994, by Ordinance No. 192.9; on October 15, 1996, by Ordinance No. 192.11; on June 17, 2003, by Ordinance No. 192.14; and

WHEREAS, the Milpitas Redevelopment Agency (the "Agency") is engaged in activities to implement the Redevelopment Plan for the Project; and

WHEREAS, Apton Properties, LLC has an option to purchase certain real property located within the boundaries of the Project Area and desires to construct improvements on the site; and

WHEREAS, the Agency and Apton Properties, LLC desire to enter into a Memorandum of Understanding to provide certain financial assistance for the development of affordable housing units on the site; and

WHEREAS, the provisions of affordable housing are consistent with the Redevelopment Plan and state law;

NOW, THEREFORE, be it resolved by the Milpitas Redevelopment Agency that the Agency hereby approves a Memorandum of Understanding and authorizes the execution of said agreement.

PASSED AND ADOPTED this 4th day of May 2004, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Gail Blalock, Agency Secretary

Jose S. Esteves, Chairperson

APPROVED AS TO FORM:

Steven T. Mattas, Agency Counsel

**Recording requested by and
When recorded, mail to:**

Milpitas Redevelopment Agency
455 East Calaveras Blvd.
Milpitas, California 95035
Attn: Executive Director

NO FEE DOCUMENT PURSUANT TO
GOVERNMENT CODE SECTIONS 6103 and 27383

REGULATORY AGREEMENT
(Apton Properties, L.L.C.)

THIS REGULATORY AGREEMENT (the "**Agreement**") is entered into effective as of _____, 2004 (the "**Effective Date**") by and between the Milpitas Redevelopment Agency, a body both corporate and politic (the "**Agency**"), and Apton Properties, L.L.C., a California limited liability company ("**Owner**"). Owner and the Agency are referred to as the "**Parties**."

RECITALS

A. Owner owns that real property located at 230 North Main Street in Milpitas, which is more particularly described in the Exhibit A attached to this Agreement (the "**Site**"), upon which Owner intends to develop 96 units of rental multi-family housing (the "**Project**").

B. Agency has provided financial assistance in the development of the Project. Agency's activities in this regard are designed to implement Agency's effort to assist persons and families of Very Low, Low and Moderate Income to purchase residential property and to increase, improve and preserve the supply of Very-Low, Low and Moderate Income housing available in the City in accordance with Community Redevelopment Law Health and Safety Code Section 33000 et seq.

C. The Property is located within the Milpitas Redevelopment Project Area.

D. The Agency and the Participant have executed an Owner Participation Agreement of even date herewith ("**OPA**") which establishes the rights and obligations of the parties with respect to development of the Property. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the OPA, and, in the event of a conflict between the OPA and this Agreement, this Agreement shall control.

E. The OPA provides for the construction on the Property of a project that includes a minimum of nine (9) units of rental housing affordable to Very Low Income Tenants and ten (10) units of rental housing affordable to Moderate Income Tenants (the "**Project**") as set forth in this Agreement.

F. The Agency's financial assistance and the use and affordability restrictions imposed by the Agency have enabled Owner and eligible Tenants hereinafter defined to rent the Assisted Units, as hereinafter defined, with financial assistance provided for in the OPA and at a price established in the OPA. In exchange for Agency's assistance, Owner and any successor in interest agrees to the restrictions on the rents and occupancy of the Property imposed by this Agreement.

NOW THEREFORE, IN CONSIDERATION of the mutual agreements, obligations, and representations, and in further consideration for the aforementioned funding, Owner and Agency hereby agree as follows:

1. **OWNER'S OBLIGATIONS**

1.1. **USE AND AFFORDABILITY RESTRICTIONS.** Owner hereby covenants and agrees, for itself and its successors and assigns, that the Property shall be used solely for the construction and operation of a 96-unit multifamily rental housing and mixed use development in compliance with the development approvals granted by City and the requirements set forth herein. Owner represents and warrants that it has not entered into any agreement that would restrict or compromise its ability to comply with the occupancy and affordability restrictions set forth in this Agreement, and Owner covenants that it shall not enter into any agreement that is inconsistent with the terms hereof without the express written consent of City. Notwithstanding the foregoing or anything to the contrary contained herein, if the terms of financing for the Project require greater affordability restrictions than those imposed hereby, the requirements of such other financing shall prevail for the term thereof.

1.2. **AFFORDABILITY REQUIREMENTS.**

1.2.1. **Nine Very Low Income Units.** For a term of fifty-five (55) years commencing upon the Effective Date, no fewer than nine (9) of the dwelling units in the Project shall be both rent-restricted and occupied (or if vacant, available for occupancy) by households whose income does not exceed fifty percent (50%) of Area Median Income as adjusted for household size. A dwelling unit shall qualify as "**rent-restricted**" under this subsection if the gross rent charged for such unit does not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income as adjusted for Assumed Household Size.

1.2.2. **Ten Moderate Income Units.** For a term of fifty-five (55) years commencing upon the Effective Date, no fewer than ten (10) of the dwelling units in the Project shall be both rent-restricted and occupied (or if vacant, available for occupancy) by households whose income does not exceed one hundred twenty percent (120%) of Area Median Income as adjusted for household size. A dwelling unit shall qualify as "**rent-restricted**" under this subsection if the gross rent charged for such unit does not exceed thirty percent (30%) of one hundred twenty percent (120%) of Area Median Income as adjusted for Assumed Household Size.

1.2.3. The dwelling units described in subsections 1.2.1. and 1.2.2 are referred to

collectively as the "Assisted Units." Occupants of the dwelling units described in subsections 1.2.1. and 1.2.2 are referred to as "Tenants."

1.2.4. The term "Area Median Income" shall mean the median gross annual income for households in Santa Clara County, adjusted for household size, as annually estimated by the United States Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 or as published in Section 6932 of Title 25 of the California Code of Regulations or successor provision published pursuant to California Health and Safety Code Section 50093(c).

1.2.5. "Assumed Household Size" shall be based on the size of the unit as follows:

<u>Size of Units</u>	<u>Assumed Household Size</u>
One Bedroom	2
Two Bedrooms	3
Three Bedrooms	4
Four Bedrooms	5

1.3. **INCOME CERTIFICATION AND RECERTIFICATION.** The income levels and other qualifications of prospective Tenant applicants for Assisted Units shall be certified prior to initial occupancy and recertified on an annual basis thereafter. The Owner and the Agency shall cooperate in establishing procedures for initial certification of applicants, maintenance of the waiting list of certified applicants, and annual recertification of Tenants. The Agency (or its designee) shall be responsible for initial certification of Tenant income, maintenance of waiting lists, and annual recertifications. The Agency shall use its reasonable best efforts to maintain a current list of eligible prospective tenants but, in no event, shall the Agency be liable to Owner for its failure to provide Owner with a list of prospective applicants. Nothing in this Agreement shall prohibit Owner from identifying prospective tenants, provided that such prospective tenants' eligibility shall be certified by the Agency (or its designee) prior to leasing. In the event that recertification of a Tenant's income indicates that the Tenant's income exceeds the maximum designated for the Tenant's applicable income category, such household shall no longer qualify as a Tenant in the applicable income category, and the Owner, in compliance with section 2.2.2, will rent the next available Unit of comparable size to a Tenant in that income category. Upon the Agency's request, Owner shall rent the next available Unit of a smaller size in the event that no Unit of comparable size is available for rent within the 60-day period following the Tenant's decertification. Any agency request that Owner rent a smaller unit shall be deemed approval of the redesignation of the unit pursuant to section 2.2.2. No tenant in the Project shall be denied continued occupancy in the Project because, after occupancy, such tenant's household income increases such that the income for such household will no longer qualify such tenants in the applicable income category.

1.4. **SECTION 8 CERTIFICATE HOLDERS.** The Owner will accept as tenants, on the same basis as all other prospective tenants, persons who are recipients of federal certificates for rent subsidies pursuant to the existing housing program under Section 8 of the

United States Housing Act of 1937, or its successor. The Owner shall not apply selection criteria to Section 8 certificate or voucher holders that are more burdensome than criteria applied to all other prospective tenants, nor shall the Owner apply or permit the application of management policies or lease provisions with respect to the Development which have the effect of precluding occupancy of units by such prospective tenants.

1.5. CONDOMINIUM CONVERSION. The Owner may convert Project units to condominium or cooperative ownership or sell condominium or cooperative conversion rights to the Site during the term of this Regulatory Agreement. However, absent an amendment to this Agreement, in the event of a condominium conversion, the restrictions set forth in this Agreement shall continue in effect, and the Assisted Units shall continue to be rented to and occupied by very low-income and moderate-income households, as the case may be, during the term of this Agreement.

1.6. NONDISCRIMINATION. The Owner shall not discriminate against any Tenant (or prospective Tenant) or segregate in the use, enjoyment, occupancy, conveyance, lease, sublease, or rental of Project units on the basis of race, color, ancestry, national origin, religion, sex, sexual preference, age, marital status, family status, source of income, physical or mental disability, Acquired Immune Deficiency Syndrome (AIDS), or AIDS-related conditions (ARC), or any other arbitrary basis. Owner shall include a statement in all advertisements, notices and signs for the availability of Development units for rent to the effect that Owner is an Equal Housing Opportunity Provider.

2. PROPERTY MANAGEMENT

2.1. MANAGEMENT RESPONSIBILITIES AND TENANT LEASES. The Owner is responsible for all management functions with respect to the Project, including without limitation the selection of tenants, evictions, collection of rents and deposits, maintenance, landscaping, routine and extraordinary repairs, replacement of capital items, and security. The Agency shall have no responsibility over management of the Project. Each lease pertaining to an Assisted Unit shall contain a provision to the effect that the Owner and the Agency have relied on the income certification and supporting information supplied by the Tenant in determining qualification for occupancy of the Assisted Unit, and that any material misstatement by the Tenant in such certification (whether or not intentional) shall be cause for immediate termination of such lease. Each lease shall also contain a provision that failure to cooperate with the annual recertification process instituted by the Owner and Agency pursuant to Section 1.3 above, shall provide grounds for termination of the lease.

2.2. PROVISION OF ASSISTED UNITS.

2.2.1. All of the Assisted Units shall be designed and constructed in a manner similar to, and to the same standards as, those other Units in the Project. To the extent required by State and Local regulations, each Assisted Unit shall contain separate and distinct facilities for living, sleeping, eating, cooking, and sanitation for a single person or family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range,

refrigerator, and sink.

2.2.2. Those Units designated as Assisted Units shall be dispersed throughout the Project with respect to both location and number of bedrooms as shown on Exhibit B, attached hereto and incorporated by reference herein. Owner, prior to issuance of Building Permits, shall submit to Agency for approval a Disbursement Plan showing the location of each Assisted Unit. Owner may designate different units than shown in the Disbursement Plan as Assisted Units provided that (a) the total number of Assisted Units is at all times no less than nineteen (19) and (b) the Agency Executive Director determines that the Assisted Units are disbursed throughout the Project such that the distribution is substantially the same as shown in the Final Disbursement Plan. At least 30 days prior to the proposed redesignation, the Owner shall notify the Agency of the proposed redesignation pursuant to section 3.10 of this Agreement, which notice shall contain a current disbursement plan that shows the then-current location of the Assisted Units and indicate the location of the proposed location of the Assisted Units. The Agency Executive Director may reject the proposed redesignation if he or she determines, in his or her sole discretion, that the redesignation would result in a concentration of Assisted Units in any particular location within the Project. Unless the Agency rejects the Owner's proposed redesignation pursuant to this section within fifteen (15) business days of the notice, the Agency shall be deemed to have approved the redesignation.

2.2.3. No Assisted Unit shall be occupied by the Owner, its residential manager or maintenance personnel.

2.3. **INSPECTION AND RECORDS.** The Owner shall maintain records that clearly document the Owner's performance of its obligations to operate the Project under the terms of this Agreement. The Owner shall submit copies of any such records to the Agency within ten (10) business days of the Agency's request. The Owner shall permit the Agency to enter and inspect the Project during ordinary business hours for compliance with obligations under this Agreement upon twenty-four (24) hours reasonable advance notice of such visit by the Agency to the Owner or Owner's management agent and to tenants of any Project units.

2.4. **FEEES, TAXES, AND OTHER LEVIES.** Owner shall be responsible for payment of all fees, assessments, taxes, charges and levies imposed by any public authority or utility company with respect to the Site, and shall pay such charges prior to delinquency.

3. **GENERAL PROVISIONS**

3.1. **RECORDATION; NO SUBORDINATION.** This Agreement shall be recorded in the official records of Santa Clara County. Owner hereby represents, warrants and covenants that with the exception of the Ground Lease and easements of record, absent the written consent of City, this Agreement shall not be subordinated in priority to any lien (other than those pertaining to taxes or assessments), encumbrance, or other interest in the Property or the Project. If at the time this Agreement is recorded, any interest, lien, or encumbrance has been recorded against the Project in position superior to this Agreement, upon the request of City, Owner hereby covenants and agrees to promptly undertake all action necessary to clear such matter from title or to

subordinate such interest to this Agreement, and to provide such evidence thereof as City may reasonably request.

3.2. DEFAULT AND REMEDIES. In the event of any breach of any agreement or obligation under this Agreement by the Owner, the Agency shall provide written notice to Owner of such breach. Owner shall have an opportunity to cure such breach within thirty (30) days from the Owner's receipt of such written notice or such longer period of time as the Agency reasonably determines is necessary to cure the breach if the Owner diligently undertakes to cure such breach. If the Owner fails to perform a timely cure of the specified breach, the Agency may proceed with any or all of the following remedies upon the Owner's failure to cure:

3.2.1. Bring an action in equitable relief seeking the specific performance by Owner of the terms and conditions of this Regulatory Agreement, and/or enjoining, abating, or preventing any violation of said terms and conditions, and/or seeking declaratory relief;

3.2.2. Pursue any other remedy allowed at law or in equity.

3.3. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No officer, employee or agent of the Agency shall be personally liable to Owner for any obligation created under the terms of this Agreement except in the case of fraud or willful misconduct by such person.

3.4. INDEMNITY. Owner shall indemnify and hold the Agency, its officers, employees, and agents free and harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which the Agency may incur as a direct or indirect consequence of Owner's failure to perform any obligations as and when required by this Regulatory Agreement. This indemnity obligation shall not extend to any claim arising solely from the gross negligence or willful acts of the Agency, its agents, and its employees. Owner's duty to indemnify the Agency shall survive the term of this Regulatory Agreement.

3.5. GOVERNING LAW. This Agreement shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

3.6. AGREEMENT CONTROLS. In the event that any provisions of this Agreement and any other agreement entered into by the Agency and the Owner, the terms of this Agreement shall control.

3.7. ATTORNEYS' FEES AND COSTS. In the event that any legal or administrative action is commenced to interpret or to enforce the terms of this Agreement, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' and expert witness fees and costs incurred in such action

3.8. TIME. Time is of the essence in this Agreement.

3.9. **CONSENTS AND APPROVALS.** Any consent or approval of the Agency required under this Agreement shall not be unreasonably withheld. Any approval must be in writing and executed by an authorized representative of the Agency.

3.10. **NOTICES, DEMANDS AND COMMUNICATIONS.** Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by one of the following methods:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

AGENCY: Milpitas Redevelopment Agency
455 East Calaveras Blvd.
Milpitas, California 95035
Attn: Executive Director
Facsimile: (408) 586-3056

OWNER: Apton Properties, L.L.C.
46509 Mission Blvd.
Fremont, CA 94539
Attn: Manager
Telephone: (510) 249-0923
Facsimile: (510) 226-1222

with a copy to: Jeffrey B. Hare
A Professional Corporation
Ten Almaden Blvd., Suite 1250
San Jose, CA 95113-2233
Telephone: (408) 279-3555
Facsimile: (408) 279-5888

3.11. **BINDING UPON SUCCESSORS.** All provisions of this Agreement shall be

binding upon and inure to the benefit of the heirs, administrator, executors, successors-in-interest, transferee, and assigns of Owner, and the Agency, and shall run with the land for the full term of this Agreement, regardless of any conveyance or transfer of the Property or portion thereof.

3.12. RELATIONSHIP OF PARTIES. The relationship of Owner and the Agency for this Project during the term of this Agreement shall not be construed as a joint venture, equity venture, or partnership.

3.13. WAIVER. Any waiver by the Agency of any obligation in this Agreement must be in writing. No waiver will be implied from any delay or failure by the Agency to take action on any breach or default of Owner or to pursue any remedy allowed under this Agreement or any other applicable agreements, or applicable law. Any extension of time granted to Owner to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Agency to any act or omission by Owner shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the City's written consent to future waivers.

3.14. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Agreement must be in writing, and shall be made only if executed by both Owner and the Agency.

3.15. SEVERABILITY. Every provision of this Agreement is intended to be severable. If any provision of this Agreement shall be held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the date first written.

AGENCY:

Milpitas Redevelopment Agency

By: _____

Thomas J. Wilson

Its: Executive Director

Attest:

Gail Blalock, Agency Secretary

Approved as to form:

Steven T. Mattas, Agency Counsel

OWNER:

APTON PROPERTIES, a California limited liability company

By:

Its:

EXHIBIT A

Legal Description of the Property

EXHIBIT B

Preliminary Distribution Plan

RECEIVED

APR 29 2004

CITY OF MILPITAS
PLANNING DIVISION

**LEVEL OF VIBRATION IN THE MARITZ APARTMENTS
LOCATED AT THE CORNER OF NORTH MAIN STREET
AND WELLER LANE IN MILPITAS, CALIFORNIA**

To: Mr. Badru Valani
Managing Director
MARITZ PROPERTIES INC.
46509 Mission Boulevard
Fremont, CA 94539

Mr. James P. McClelland A.I.A.
Principal

Mr. John Maple, FARA/ A.I.A.
Principal

MAPLE DELL + McCLELLAND
Architects, LLP
1646 North California Blvd. Suite 650
Walnut Creek, California 94596

By: Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.

Mr. Joseph G. Morrow
Acoustical Consultant, C.M.

DR. PENZES & ASSOCIATES
12475 Bodega Way
San Diego, CA 92128

April 28, 2004

DR. PENZES & ASSOCIATES

ACOUSTICS

Reports, Testing and Research

LEVEL OF VIBRATION IN THE MARITZ APARTMENTS LOCATED AT THE CORNER OF NORTH MAIN STREET AND WELLER LANE IN MILPITAS, CA.

SUMMARY:

To estimate the vibration level at the Maritz Apartments at the corner of North Main Street and Weller Lane in Milpitas, CA, several similar projects were reviewed (References 1, 2 and 3). The CALTRANS Standard related to Train Induced Vibration was primarily applied (Ref. 4). Ref. 4 presents the possible Maximum Velocity Limits of the Train Induced Vibration as a function of the distance between the center line of the railroad track and the building. Based on this information, an Analysis was performed which clearly shows that the vibration level at future conditions will be insignificant.

HISTORY:

A single set of railroad tracks is located 43 Ft from the planned Apartment Building. During the design of the Maritz Apartments, several attempts were made to determine purpose and usage of this single set of tracks without any success. The only information that was able to be obtained concerning this railroad track was that it is used for the overflow for railroad cars. However, when this track was last used is unknown. According to Mr. Keith Minnie, Project Manager for MAPLE DELL AND McCLELLAN ARCHITECTS, LLP, from the information he has received from UNION PACIFIC RAILROAD regarding the existing railroad tracks running adjacent to the east property line of the site, these railroad tracks are used very infrequently and their main purpose are to provide overflow functions for other railway lines in the area. Under these conditions, even when the Maritz Apartments are built, we could not perform any meaningful vibration tests in the building, since when the track would be used cannot be determined from the Railroad Company. Therefore, we are forced to solve the vibration problem induced by trains by reviewing similar cases and the CALTRANS Vibration Standard (Ref. 4).

Method of Solution

Ref.'s 1, 2 and 3 only discuss ground motion without the dynamic response of the building. It is desired that the flexibility of the building is also estimated in our analysis. The response due to the flexibility of a building during ground motion excited by the train motion will also be estimated. Therefore, this factor will be used related to the ground motion of a building and this value can be compared with the curve of the CALTRANS Vibration Standard.

Analysis of the Train Induced Vibration of the Maritz Apartments

The distance between the Maritz Apartments and the centerline of the railroad track is 43 Ft (13.1 m). The report "Ground Vibration Study, Beresford Terrace, Milpitas, California" (Ref. 1) presents a ground velocity in the range of 0.0305 in/sec to 0.0405 in/sec at a distance of 50 Ft. For this test, the longest train had 3 engines and pulled 52 cars at a moderate speed of 25 - 30 MPH. The California Landing Planned Unit Development, Milpitas, California, Final Environmental Impact Report (Ref. 2) shows a 50% reduction in displacement speed from a distance of 50 Ft to 120 Ft. With this information, the Maximum Ground Motion is:

$$V, \text{ Max, Ground} = 0.0405 \times 7(0.005/70) = 0.041 \text{ in/sec} = \underline{1.03 \text{ mm/sec}}$$

which is approximately 1 mm/sec (Point A, Fig. 4-1).

Let us assume a factor of 1.75 (75%) for the magnification of motion of the building, then, the Maximum Velocity is (Point B, Fig. 4-1)

$$V, \text{ Max, Building} = 1.75 \times 1.0 \text{ mm/sec} = \underline{1.75 \text{ mm/sec}}$$

Values of peak velocities less than 2 mm/sec will not cause any damage even to historically significant buildings and the above value is far from the Architectural Damage Risk of 5 mm/sec.

If CALTRAN's recommendation by Fig. 4-1 is followed, 1.75 mm/sec may cause some feeling of vibration.

However, the magnification factor of 75% is possible, but this value is not certain and if the 1.0 mm/sec is applied, then vibration may be very lightly felt.

Recommendation

With conservative assumption (Ref.'s 1, 2 and 4), the current Study shows very light vibration in the Building by Train Induced Vibration on neighboring single track. The level of vibration may be lightly felt by the persons in the building. However, the level of vibration (1-1.75 mm/sec) is below the vibration limit of 2 mm/sec set for Historical Buildings (Fig. 4-1, Ref. 4). Therefore, the Vibration Level in the Building, if any, will not cause any problems for the tenants or the Building.

Dr Leslie E Penzes

Dr. Leslie E. Penzes
Certified Acoustical Consultant, P. E.

April 28, 2004



REFERENCES

1. GROUND VIBRATION STUDY, BERESFORD TERRACE, MILPITAS, CALIFORNIA, Patrick Stevens, P.E., G.E., Kaldveer Associates, April 10, 1992.
2. Excerpts from the FINAL ENVIRONMENTAL IMPACT REPORT, VOLUME 1, (Updated Draft EIR) California Landing Planned Unit Development, Milpitas, California, Bissell & Karn, Inc., September, 1988.
3. ENVIRONMENTAL NOISE AND VIBRATION NOISE STUDY FOR THE "CALIFORNIA LANDING" RESIDENTIAL DEVELOPMENT, DIXON LANDING ROAD AND MILMONT DRIVE, MILPITAS., Jeffrey K. Pack, President, Edward L. Pack Associates, Inc., April 19, 1988.
4. MILPITAS COMMUNITY LIBRARY STUDY, INITIAL STUDY/MITIGATED NEGATIVE DECLARATION, 4.0 Discussion of Environmental Checklist, City of Milpitas, January, 2004.

FIGURE

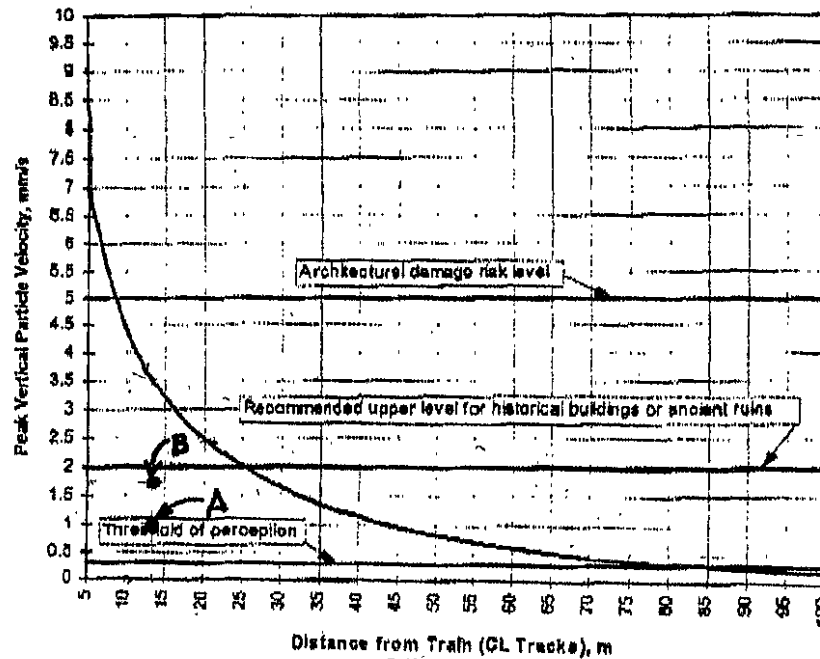


Figure 4-1: Maximum Vibration Levels from Train Operations by Distance

A = GROUND MOTION

B = GROUND MOTION AND BUILDING MOTION



HEXAGON TRANSPORTATION CONSULTANTS, INC.

RECEIVED

March 18, 2004

APR 7 2004

Mr. Joe Oliva
City of Milpitas
455 E. Calaveras Blvd.
Milpitas, California 95035

CITY OF MILPITAS
PLANNING DIVISION

Re: Traffic Study for the Proposed Apton Apartments in Milpitas

Dear Mr. Oliva:

This letter report presents the results of the traffic study prepared for the proposed residential and retail development located at 230 Main Street and 198 Weller Lane in Milpitas, California. The site is currently vacant. The project as proposed would consist of 96 apartment units and approximately 3,000 square feet of retail space. It would also involve a land swap between the developer and the City of Milpitas. The private property in the land swap is located on the southern end of the site. The City property is located along Weller Lane and in the median area at the southeast corner of the Main Street/Railroad Avenue intersection. Access to the site would be provided via Railroad Avenue and Main Street. Parking would be provided onsite and along Main Street, adjacent to the site. The project location and study intersections are shown on Figure 1. The proposed site plan, delivered to Hexagon on March 17, 2004, is shown on Figure 2.

The potential impacts of the project were evaluated in accordance with the standards set forth by the City of Milpitas and the Congestion Management Program (CMP) of Santa Clara County. The study included analysis of AM and PM peak-hour traffic conditions for three signalized intersections and three unsignalized intersections. In addition, the proposed site plan was evaluated in terms of site access, onsite circulation, and parking. The study intersections include:

1. Abel Street & Weller Lane
2. Main Street & Weller Lane
3. Main Street & Carlo Street (unsignalized)
4. W. Calaveras Boulevard & Abel Street*
5. Main Street & WB SR-237 Off-Ramp (unsignalized)
6. Main Street & Railroad Avenue

(*) denotes CMP intersection.

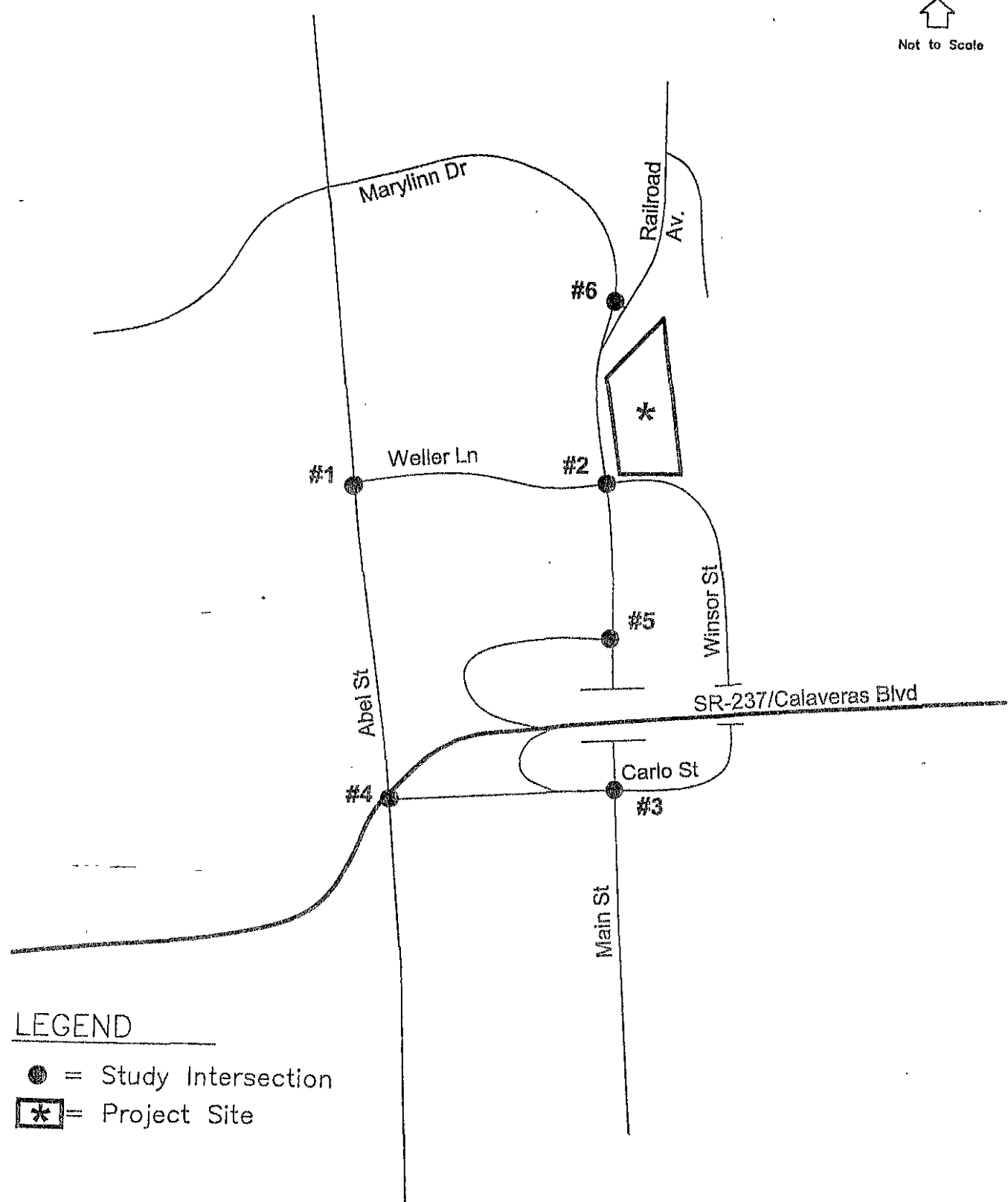
Surrounding Transportation Facilities

Regional access to the project is provided via Interstate 680 (I-680), I-880 and State Route 237 (SR 237). Direct access to the current site is provided via Railroad Avenue. Other major facilities in the vicinity include Abel Street and Main Street. These facilities are described below.

I-680 is a north/south freeway traversing the eastern portion of Milpitas. This freeway connects the inland East Bay communities to the north with San Jose to the south. I-680 has six lanes north of SR 237 and eight lanes south of SR 237. A northbound HOV lane is currently under construction on I-680 north of Calaveras Boulevard. A southbound HOV lane north of Calaveras Boulevard was recently completed.



Not to Scale



LEGEND

- = Study Intersection
- ✱ = Project Site

Hexagon
Transportation Consultants, Inc.

Figure 1
**SITE LOCATION &
STUDY INTERSECTIONS**

Apton Apartments -- Milpitas

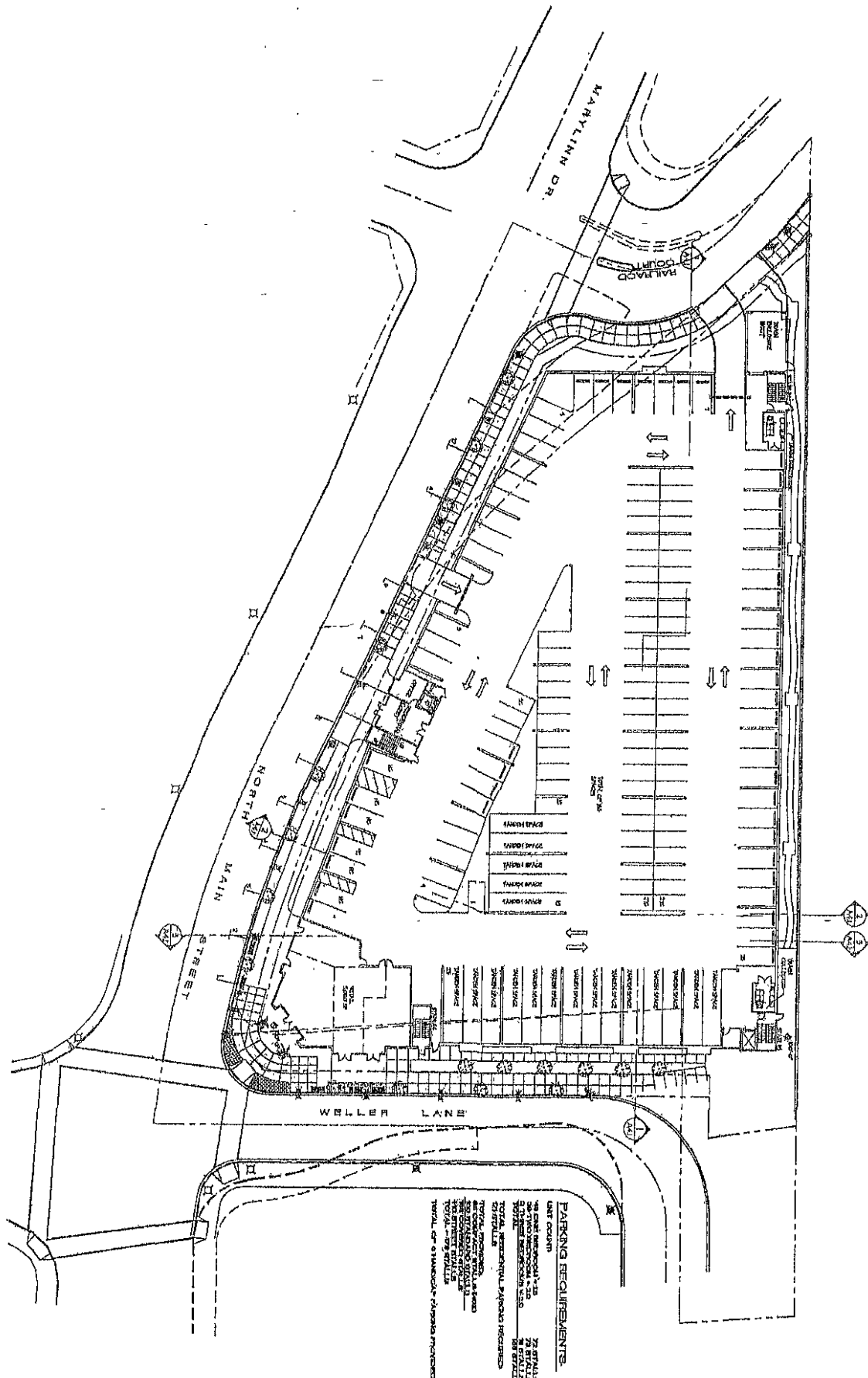


Figure 2

SITE PLAN

Apton Apartments - Milpitas

I-880 is also a north/south freeway providing regional access from East Bay cities to San Jose, where it becomes SR 17. Within the City of Milpitas, I-880 is a six-lane freeway. South of Montague Expressway, I-880 was recently widened to six lanes.

State Route 237/Calaveras Boulevard is an east/west arterial between I-880 and I-680 and generally provides six travel lanes (four on the Union Pacific overcrossing). West of I-880, this facility becomes a freeway with four mixed flow lanes and two High Occupancy Vehicle (HOV) lanes. Calaveras Boulevard accommodates a significant amount of regional through traffic during the peak commute hours. Milpitas staff estimate that approximately 50 percent of the peak hour traffic between I-680 and I-880 is generated outside of Milpitas. The predominate direction of travel is westbound in the morning and eastbound during the afternoon.

South Main Street is a north/south collector connecting Montague Expressway to residential areas north of Calaveras Boulevard. This roadway consists of four travel lanes from Montague Expressway to just north of Curtis Avenue, where it transitions to a two lane facility with parking on both sides. Main Street currently operates within capacity, but experiences significant congestion at its intersection with Montague Expressway.

South Abel Street is a north/south arterial beginning at South Main Street and terminating at North Milpitas Boulevard. This facility is signalized at major cross-streets, where left-turn pockets are provided. On street parking is generally prohibited, except adjacent to commercial frontage. With the exception of certain movements at major intersections, this facility generally operates within its design capacity.

Railroad Avenue is a two-lane roadway that begins at Main Street and ends just east of the railroad tracks. It provides access to the surrounding industrial properties. This facility currently operates within capacity.

Weller Lane is an east-west roadway that begins just west of the railroad tracks and ends at Abel Street. Weller Lane currently operates within capacity.

Main/Weller Transit Station. A bus transfer station is currently located at the corner of Main Street and Weller Lane. This facility services routes 520, 180, 140, 77, 71, 70, 66, and 56 on headways that vary from 15 to 60 minutes. With the addition of the Tasman East light rail line, it is anticipated that VTA will significantly alter its routes in the area. This may include a reduction in service at the Main/Weller Station.

Project Trip Generation, Distribution, and Assignment

The magnitude of traffic generated by the proposed project was estimated by applying to the size of the development the applicable trip generation rates. The trip generation rates used for the existing and proposed project are based on those published in the Institute of Transportation Engineers (ITE) manual entitled *Trip Generation, Sixth Edition*. A trip reduction was applied to the project trips based on the Valley Transportation Authority (VTA) trip reductions for mixed-use developments. It is estimated that the proposed residential/retail project would generate 66 trips during the AM peak hour and 81 trips during the PM peak hour. The trip generation estimates are shown in Table 1.

Table 1
Trip Generation Estimates

ID	Use	size	unit	AM Peak Hour						PM Peak Hour					
				Rate			Trips			Rate			Trips		
				In	Out	Total	In	Out	Total	In	Out	Total	In	Out	Total
[A]	Residential	96	units	0.08	0.45	0.53	8	43	51	0.49	0.25	0.74	47	24	71
[B]	Mixed-use reduction						1	1	2				1	1	2
[C]=[A-B]	Total Residential						7	42	49				46	22	68
[D]	Retail	3,000	ksf	3.08	3.33	6.41	9	10	19	2.81	2.12	4.93	8	6	15
[B]	Mixed-use reduction						1	1	2				1	1	2
[E]=[D-B]	Total Retail						8	9	17				7	6	13
[C+E]	Total Trips (with mixed-use reduction)						15	51	66				53	27	81

Note: Numbers may not add due to rounding.

- 1) Based on ITE Apartment Trip Generation Rate (Land Use Code 220)
- 2) Based on ITE Specialty Retail Trip Generation Rate (Land Use Code 814)
- 3) Based on VTA mixed-use trip reductions for housing/retail uses -13% off the smaller trip generator

The trip distribution pattern for the proposed project was estimated based on existing travel patterns on the surrounding roadway system and the locations of complementary land uses. The trip distribution pattern is shown graphically on Figure 3. The peak-hour trips generated by the proposed development were assigned to the roadway system in accordance with the trip distribution pattern. Figure 4 shows the project trip assignment.

Data Collection and Methodology

Traffic conditions were evaluated for the following scenarios:

- *Existing Conditions.* Existing conditions were represented by existing peak-hour traffic volumes on the existing roadway network. Existing traffic volumes were obtained from new counts and recent traffic studies.
- *Background Conditions.* Background conditions were represented by background traffic volumes on the existing roadway network. Background traffic volumes were estimated by adding to existing peak-hour volumes the projected volumes from approved but not yet completed developments (see Appendix for list of approved projects). The latter component is contained in the City of Milpitas Approved Trips Inventory (ATI). In addition, traffic from the Senior Center on Weller Lane, which is currently vacant, was added into the background conditions. Based on its potential occupancy, the senior center was estimated to generate approximately 30 trips during each of the AM and PM peak hours. All intersection lane configurations were assumed to be the same as under existing conditions.



Not to Scale

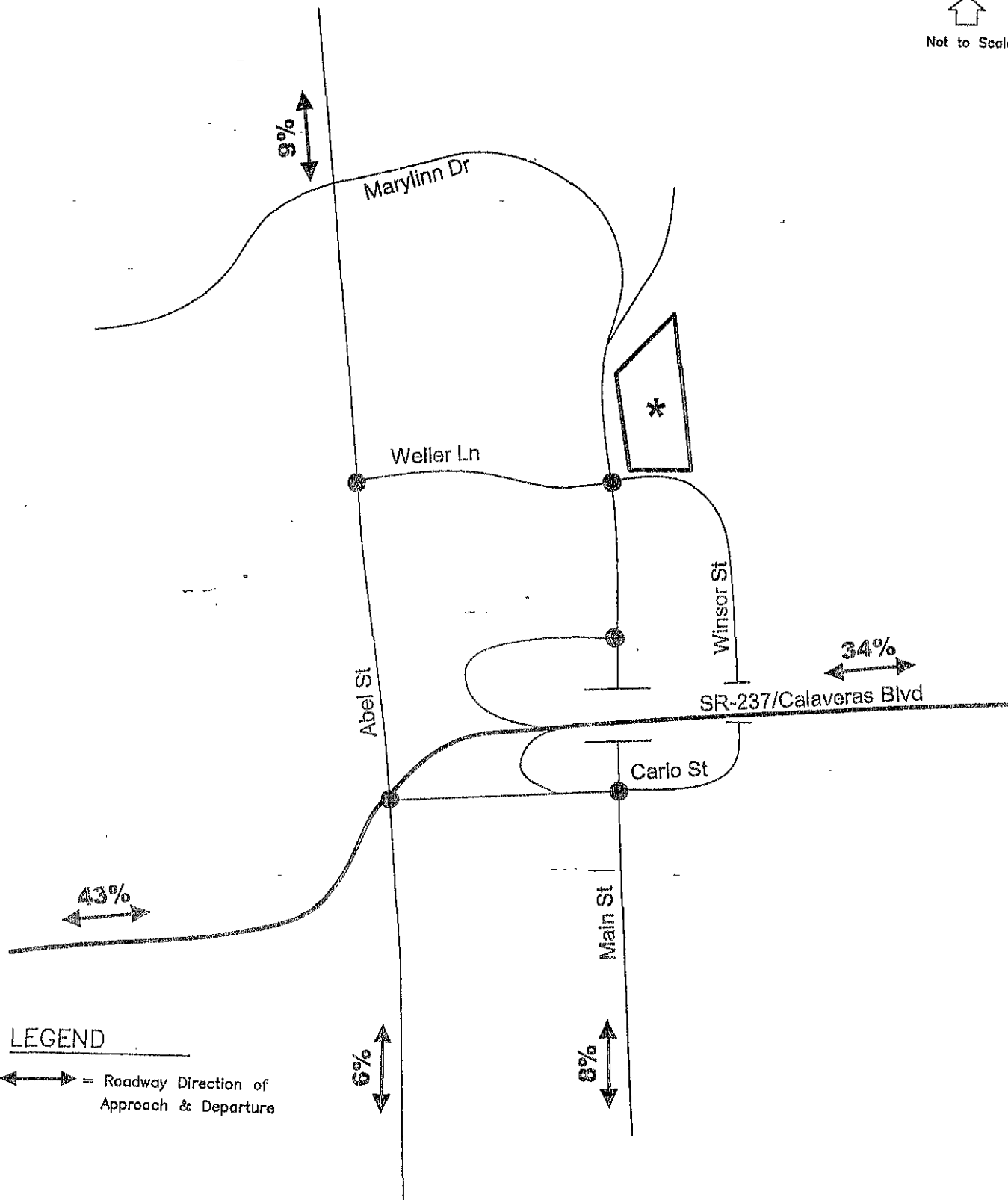
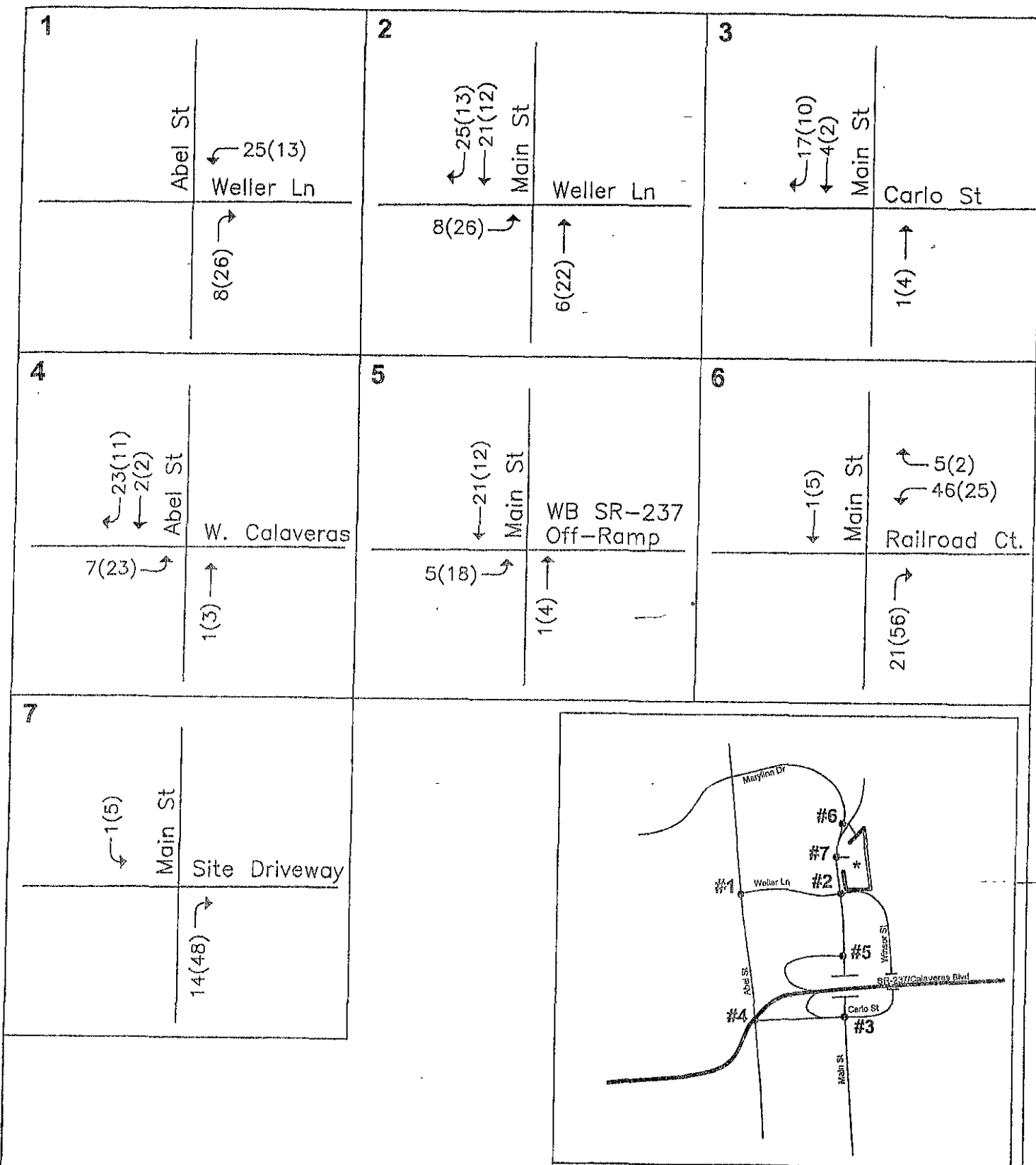


Figure 3
TRIP DISTRIBUTION

Apton Apartments — Milpitas



XX(XX) = AM (PM) Peak Hour Volumes

Figure 4

PROJECT TRIP ASSIGNMENT

Apton Apartments — Milpitas

- **Project Conditions.** Project conditions were represented by traffic volumes, with the project, on the existing roadway network. Traffic volumes with the project (hereafter called *project traffic volumes*) were estimated by adding to background traffic volumes the additional traffic generated by the project. Project conditions were evaluated relative to background conditions in order to determine potential project impacts.

Level of Service Analysis

Traffic conditions at the study intersections were evaluated using level of service (LOS). *Level of Service* is a qualitative description of operating conditions ranging from LOS A, or free-flow conditions with little or no delay, to LOS F, or jammed conditions with excessive delays. The City of Milpitas and CMP level of service methodologies utilize TRAFFIX software using CMP default settings. TRAFFIX is based on the *Highway Capacity Manual* (HCM) method for intersections, and evaluates intersection operations on the basis of average delay for all vehicles at the intersection. The results of the level of service analysis are shown on Table 2 (see also Appendix).

Existing Conditions. The results of the level of service analysis show that measured against the appropriate level of service standard, all of the study intersections currently operate at acceptable levels of service.

Background Conditions. Under background conditions, the unsignalized intersection of Main and Carlo would degrade to an unacceptable LOS E. The City LOS standard is D. Additionally, the intersection of Abel and Calaveras, a CMP intersection, would degrade to LOS E during the AM peak hour. However, LOS E is an acceptable level of service for CMP intersections. Therefore, under background conditions, only the intersection of Main and Carlo would operate at unacceptable levels. All other study intersections would continue to operate at the same levels of service as under existing conditions.

Project Conditions. All intersection lane configurations were assumed to be the same as under existing conditions. The only exception is at Main Street and Railroad Avenue, where median modifications on Railroad Avenue are part of the "land swap." As part of the project's "land swap" with the City of Milpitas, Weller Lane would be narrowed and its intersection with Main Street would be slightly realigned. In addition, the dedicated right-turn lane from northbound Main Street to Eastbound Railroad Avenue would be removed and the project property lines extended outward toward Main Street. The design of the Main Street/Railroad Avenue intersection as shown on the current plan would not significantly change the level of service. The proposed configuration was also designed to accommodate large numbers of heavy vehicles. At all other study intersections, the addition of project traffic would not result in a LOS impact for either peak hour. However, the project would further degrade intersection operations at Main and Carlo, which is projected to operate at unacceptable levels under background conditions. The City is currently considering the installation of a traffic signal at this location.

- **Recommendation:** Since the project will be adding trips to the Main/Carlo intersection, the project shall be required to make a "fair share" contribution to the signalization of this intersection
- **Recommendation:** The realignment and narrowing of Weller Lane will require signal modifications at the intersection of Weller Lane and Main Street. The costs and responsibilities for these improvements will be determined as part of the proposed land swap.

Table 2
Intersection Level of Service Summary

	Existing						Background						Project					
	AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour			AM Peak Hour			PM Peak Hour		
	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS	Delay	V/C	LOS
Abel Street & Weller Lane	7.2	0.37	B	7.5	0.43	B	7.3	0.38	B	7.5	0.43	B	7.7	0.39	B	7.6	0.45	B
Main Street & Weller Lane	13.2	0.29	B	15.3	0.37	C	13.2	0.29	B	15.3	0.37	C	14.5	0.34	B	16.3	0.42	C
Main Street & Carlo Street (unsignalized)	7.0	n/a	B	23.5	n/a	D	8.1	n/a	B	38.1	n/a	E	8.1	n/a	B	38.1	n/a	E
W. Calaveras & Abel Street*	35.9	0.96	D	32.8	0.96	D	48.1	1.02	E	36.3	0.98	D	52.8	1.03	E	38.3	1.00	D
Main St. & WB SR-237 Off-Ramp (unsignalized)**	5.9	n/a	B	4.8	n/a	A	5.9	n/a	B	4.8	n/a	A	6.2	n/a	B	5.4	n/a	B
Main St. & Railroad Ct. (unsignalized)**	4.8	n/a	A	5.2	n/a	B	4.8	n/a	A	5.2	n/a	B	5.3	n/a	B	5.8	n/a	B

*denotes CMP Intersection

** Two way stop controlled intersection. Delay represents worst leg of intersection approach.

1) Project LOS calculation includes change in WB lane configuration (one shared right-through-left turn lane)

 = denotes unacceptable LOS according to applicable standard, LOS D or better for City of Milpitas, LOS E or better for CMP

- **Recommendation:** The removal of the northbound right-turn lane at Main Street and Railroad Avenue will require curb, signing, and striping modifications at the intersection. The costs and responsibilities for these improvements will be determined as part of the proposed land swap.

Cumulative Conditions

In the immediate Apton project vicinity, the Milpitas Public Library development is currently in the planning stages. The library site would be located east of Main Street and south of Weller Lane. This would significantly increase the number of trips in the project vicinity during peak hours. Even with these increases, however, the intersections immediately surrounding the site would likely operate within capacity during peak hours because they are projected to operate at LOS C or better under Apton project conditions. The specific impacts of the library project should be evaluated in its own traffic impact analysis.

Site Access, Circulation, and Parking

The proposed site plan, shown on Figure 2, was reviewed for site access, circulation, and parking.

Site Access. Access to the site would be provided via a single outbound driveway on Railroad Avenue and a single inbound driveway on Main Street. To accommodate outbound left-turns from the project, median modifications would be required on Railroad Avenue. These modifications are proposed as part of the project and are shown on the current site plan. Both Main Street and Railroad Avenue are two-lane roadways in the vicinity of the project site. The speed limits on Main Street and Railroad Avenue are 30 mph and 25 mph, respectively. The low traffic volumes and slow vehicle speeds on Main Street and Railroad Avenue would allow for adequate access at the site's proposed driveway. The project driveways are shown on the current plan as gated. The inbound driveway on Main Street would allow for one vehicle to queue on the driveway. Beyond this, inbound vehicle queues would spill back onto Main Street.

- **Recommendation:** ITE states that one-way driveway commercial driveways should be at least 15 feet wide. The project should comply with this standard.
- **Recommendation:** One-way driveways for commercial properties are not ideal because drivers occasionally attempt to enter the site in the exit driveway, or vice-versa. This is especially problematic in the current design because the driveways would be gated and there would be no place for vehicles to turn around. To minimize the probability of this, the directionality of the driveway should be clearly marked on each driveway with appropriate signage and striping.
- **Recommendation:** The inbound driveway on Main Street would allow for only one vehicle to queue before the gate. Given the estimated peak hour project traffic volumes at this driveway, it is probable that more than one vehicle would attempt to enter the site at a time, which could result in the temporary blockage of Main Street. This situation could be improved by (1) allowing inbound driveway queuing space for two vehicles or (2) removing the gates at the project entry.
- **Recommendation:** The parking stall on the south side of the Main Street driveway is too close to the driveway. As a result, some vehicles may not be able to complete the turn. This could be improved by restricting parking within 15 feet of the inbound driveway.

Mr. Joe Oliva
March 18, 2004
Page 11 of 11

Parking. Parking for the proposed project would be provided onsite in a garage and along the streets adjacent to the site. The garage parking would include some tandem parking spaces. The site plan shows that the parallel parking spaces along Main Street would allow for an adjacent 15.5-foot northbound travel lane. The City requires a minimum lane width of 12 feet for one-way operations. Thus, the parallel parking layout on Main Street is sufficient per the City standards. The City of Milpitas Zoning Ordinance for mixed-use development specifies the required parking supply for retail/residential developments.

- **Recommendation:** The project should comply with City of Milpitas parking supply standards or demonstrate that the parking supply provided would accommodate the anticipated demand.

Site Circulation. Aside from the proposed parallel parking on Main Street, most of the vehicle/pedestrian circulation would take place on site. All on site parking stalls would be oriented at 90 degrees to their respective drive aisles. All drive aisles would accommodate two-way traffic. The vehicle and pedestrian circulation was evaluated to identify blind spots, pedestrian/vehicle circulation, and other specific onsite circulation issues. No irregularities were identified.

This concludes our analysis of the proposed residential/retail development in Milpitas. Please do not hesitate to contact us with any questions.

- Sincerely,

HEXAGON TRANSPORTATION CONSULTANTS, INC.



Brett Walinski
Sr. Project Manager

1. RECEIVED
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CITY OF MILPITAS
PLANNING DIVISION

THE APTON

NORTH MAIN STREET
MILPITAS, CALIFORNIA

A PROJECT FOR:
APTON PROPERTIES, LLC
46509 MISSION BOULEVARD
FREMONT, CA 94539

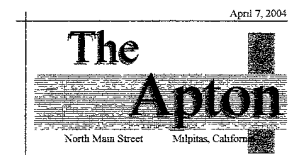
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A10	LAND EXCHANGE CONCEPT PLAN
A11	SITE PLAN
A12	DEMOLITION PLAN
C-2	CONCEPT UTILITY PLAN
L-11	CONCEPT LANDSCAPE PLAN
A22	GARAGE LEVEL PLAN
A23	FIRST LEVEL RESIDENTIAL FLOOR PLAN
A24	SECOND LEVEL RESIDENTIAL FLOOR PLAN
A25	THIRD RESIDENTIAL FLOOR PLAN
A26	ROOF PLAN
A3.1	CONCEPT ELEVATIONS
A4.1	SECTIONS & COURTYARD ELEVATIONS
A5.1	ENLARGED SCALE UNIT PLANS
A5.2	ENLARGED SCALE UNIT PLANS
A5.3	ENLARGED SCALE UNIT PLANS

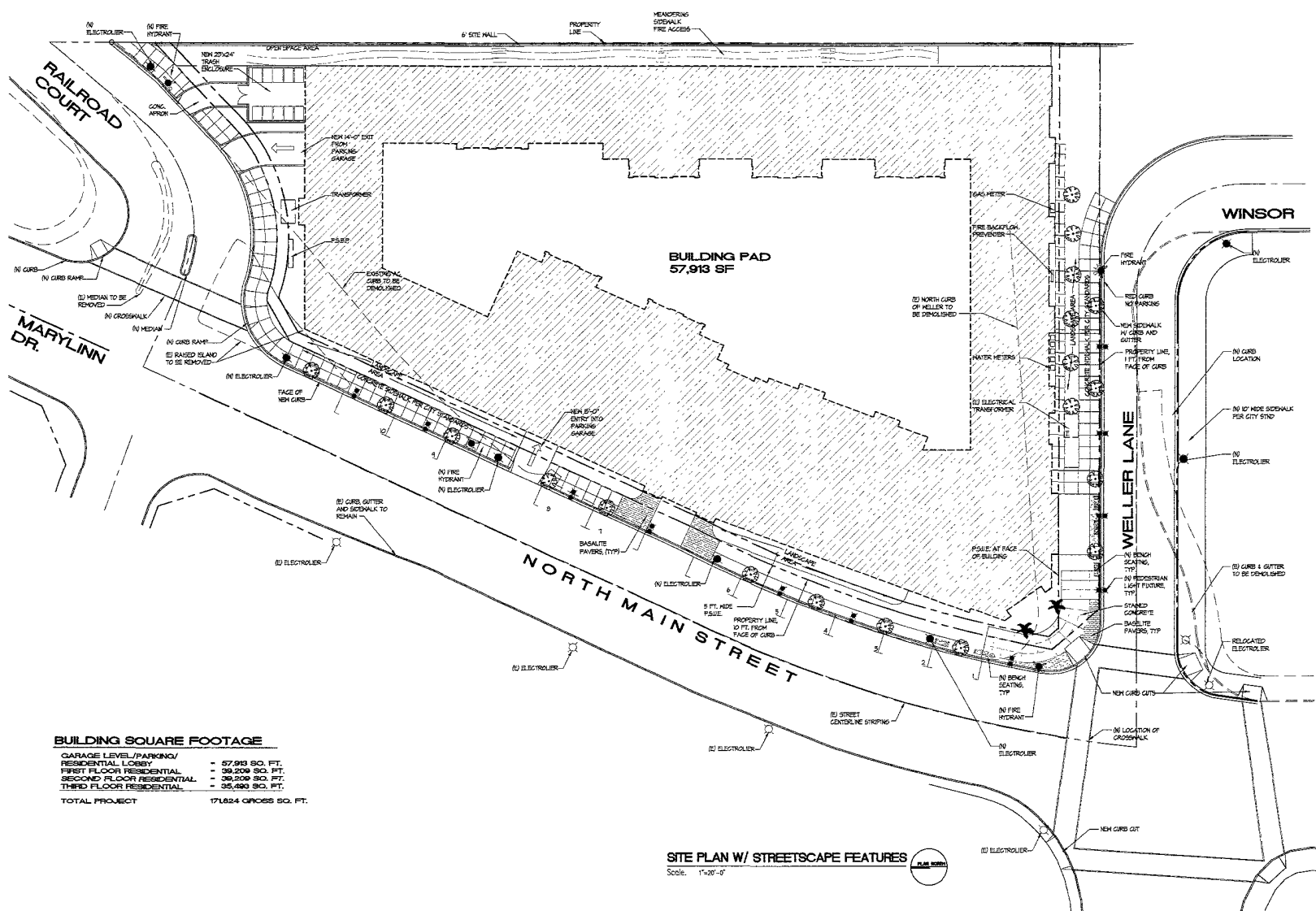
APRIL 7, 2004

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331 STEVENS AVENUE WEST
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VICINITY MAP
Scale: N.T.S.



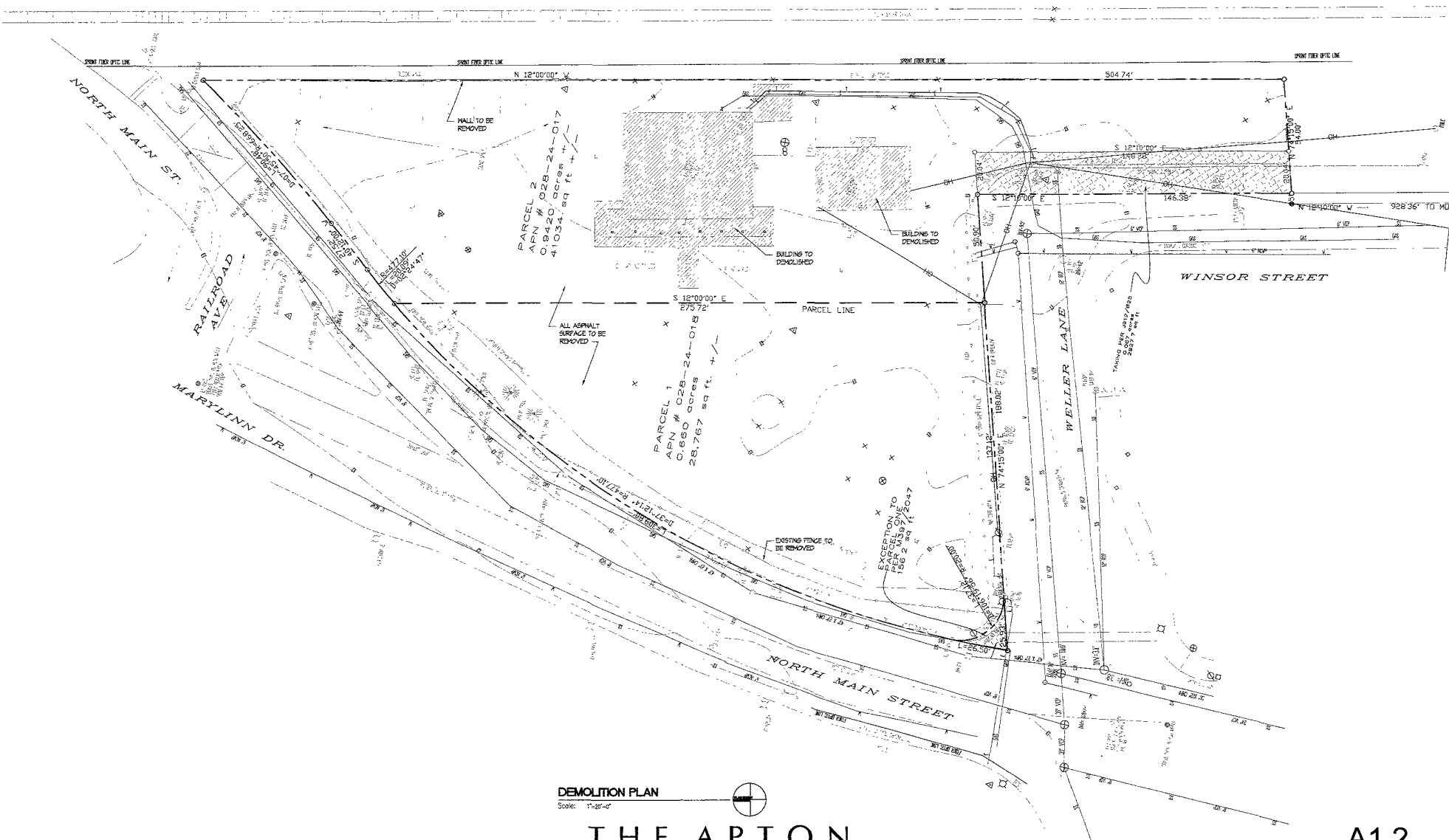
SITE PLAN W/ STREETSCAPE FEATURES

Scale: 1"=25'-0"

DATE: APRIL 7, 2004
 PROJECT NUMBER: 161020122
 SCHEME: DESIGN RESUBMITTAL
 DRAWN BY: ZM/KAM/TS

THE APTON
 MILPITAS, CALIFORNIA
 APTON PROPERTIES, LLC
 46509 MISSION BOULEVARD
 FREMONT, CA 94539

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 ARCHITECTS, LLP
 ARCHITECTURE ▽ PLANNING ▽ INTERIOR DESIGN
 531 STEVENS AVENUE WEST
 SOLANA BEACH, CALIFORNIA 92085
 T 858/753-8848 F 858/753-8850



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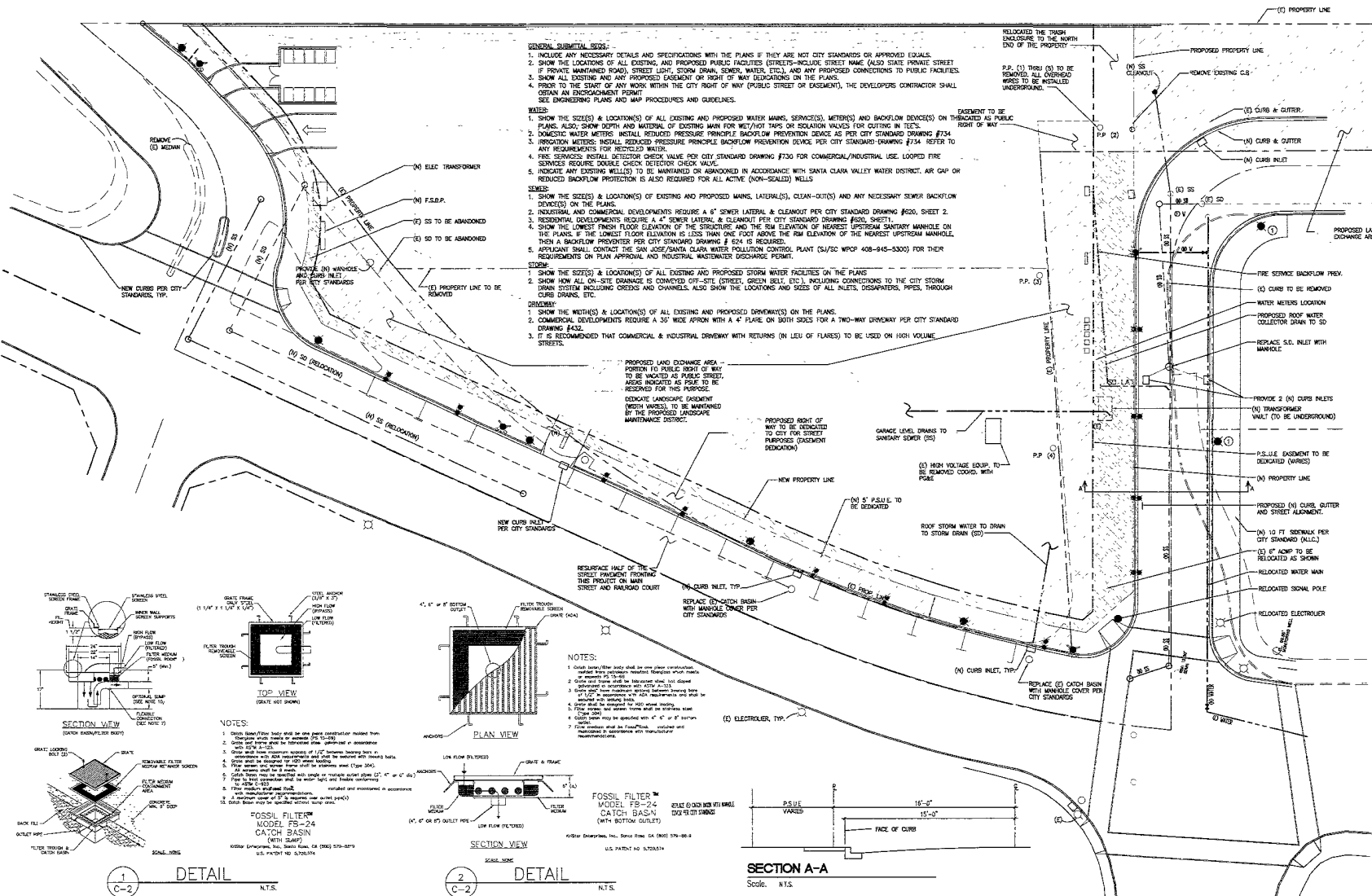
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NOTES:

1. UNDERGROUND UTILITY LOCATIONS SHOWN HEREON WERE TAKEN FROM RECORD DATA. NO GUARANTEE IS MADE OR IMPLIED AS TO THE ACCURACY OF SUCH RECORD DATA. NO EXCAVATIONS WERE MADE TO CONFIRM LOCATIONS. CONTRACTORS SHALL CONTACT U.S.A. UNDERGROUND (1-800-227-2500) AND TO EXERCISE EXTREME CARE IN VERIFYING ALL LOCATIONS PRIOR TO COMMENCING EXCAVATIONS OR OTHER WORK WHICH MAY AFFECT THESE UTILITIES.
2. INFORMATION LATERALS, PARKING LOT LIGHTING WIRING AND SIGNAGE NOT SHOWN. VERIFY LOCATION BEFORE COMMENCING TO RELOCATE, REPAIR OR REMOVE IMMEDIATELY WHERE BROKEN TO PROVIDE UNINTERRUPTED SERVICE.
3. DUST CONTROL MITIGATION NOTES.
 - A) WASH OFF TRUCKS BEFORE LEAVING THE SITE.
 - B) ROADWAYS TO BE PERIODICALLY SWEEP AND KEEP CLEAN.
 - C) PROVIDE SOIL BINDER AFTER GRADING.
 - D) TRUCKS TO BE TARPED BEFORE LEAVING THE SITE.
4. PROVIDE SLOES BINDER ON SITES WHEN NO CONSTRUCTION IS PROJECTED FOR A 90-DAY PERIOD FOR DUST CONTROL.

EROSION CONTROL GENERAL NOTES:

1. PERFORM BEST MANAGEMENT PRACTICES FOR EROSION CONTROL.
2. A STAFF-OR-CREW FOR EMERGENCY WORK SHALL BE AVAILABLE AT ALL TIMES DURING THE RAINY SEASON (OCTOBER 15 TO APRIL 15). NECESSARY MATERIAL SHALL BE AVAILABLE ON SITE AND STOCKPILED AT CONVENIENT LOCATIONS TO INSURE THE RAPID CONSTRUCTION OF EMERGENCY DEVICES.
3. EROSION CONTROL DEVICES SHOWN ON THIS PLAN MAY BE REMOVED OR MODIFIED AS DIRECTED IF THEY INTERFERE WITH GRADING OPERATIONS, OR IF THE GRADING OPERATION HAS PROCEEDED TO THE POINT WHERE THEY ARE NO LONGER REQUIRED.
4. EXCEPT AS OTHERWISE DIRECTED, ALL DEVICES SHOWN ON THE PLAN SHALL BE IN PLACE AT THE END OF EACH WORKING DAY.
5. ALL LOOSE SOIL AND DEBRIS WHICH MAY CREATE A POTENTIAL HAZARD TO OFFSITE PROPERTY SHALL BE REMOVED FROM THE SITE AS DIRECTED.
6. ALL SOIL AND DEBRIS SHALL BE REMOVED FROM ALL DEVICES WITHIN 24 HOURS AFTER EACH RAINFALL OR AS DIRECTED.
7. A GUARD SHALL BE POSTED ON THE SITE WHENEVER THE DEPTH OF WATER IN ANY DEVICE EXCEEDS TWO FEET. THE DEVICE SHALL BE DRAINED OR PUMPED DRY WITHIN 24 HOURS AFTER EACH RAINFALL.
8. THE PLACEMENT OF ADDITIONAL DEVICES TO REDUCE EROSION DAMAGE WITHIN THE SITE IS LEFT TO THE DISCRETION OF THE ENGINEER.
9. GRAVEL BAGS SHALL BE STOCKPILED IN PARKWAY READY TO BE PLACED IN POSITION WHEN RAIN IS FORECAST OR WHEN DIRECTED.

NOTE:

TOPOGRAPHIC AND BOUNDARY INFORMATION SHOWN HEREON WAS PREPARED BY ALVAREZ AND ASSOCIATES INC. AND SUPPLIED BY THE OWNER FOR USE BY BRID ENGINEERING ASSOCIATES, INC.

GENERAL NOTES:

STREET LEVEL PARKING SHOWN. LEVEL 1 PARKING SHALL TIE TO GROUND LEVEL DRAINAGE AND DRAIN TO SANITARY SEWER. LEVEL 2 PLAZA AREA SHALL TIE TO ROOF DRAINAGE AND DRAIN TO STORM DRAIN. EASTERN PORTION OF NORTH MAIN STREET TO BE REPAVED FROM MILLER LANE TO RAILROAD COURT AFTER RELOCATION OF SEWER & STORM DRAIN. APPLICANT SHALL SUBMIT A TRAFFIC SIGNAL MODIFICATION PLAN INDICATING ALL REVISIONS NECESSARY TO ACCOMMODATE THE NARROWED 30' STREET FOR MILLER LANE EAST OF MAIN STREET. THE REVISIONS TO EVALUATE THE POSSIBLE RELOCATION OF (3) SIGNAL POLES LOCATED AT THE NORTHEAST AND SOUTHEAST CORNERS OF THE REBID STREET; SIGNAL HEAD RELOCATIONS AND/OR MODIFICATIONS FOR PROPER ALIGNMENT TO THE PERMITTED MODIFICATIONS; SIGNAL LOOPS TO BE ABANDONED AND INSTALLED; AND CROSSWALKS WITH HANDICAP RAMP TO BE REMOVED AND RELOCATED, PARTICULARLY AT THE NORTH SIDE OF THE INTERSECTION.

NO PARKING IS ALLOWED ON MILLER LANE.

INTERSECTION DESIGN/MODIFICATION SHALL BE COORDINATED WITH THE CITY OF MILPITAS LIBRARY PROJECT.

TRAFFIC CALMING DEVICES MAY BE REQUIRED TO BE INSTALLED AS PART OF THIS PROJECT, SUCH AS BUMP-OUT AT CORNERS.

(1) STANDARD CITY STREET LIGHTS MAY NOT CONFORM TO THE PROPOSED LIBRARY IMPROVEMENTS. DEVELOPER IS REQUIRED TO CONTRIBUTE PAYMENT IN LIEU OF IMPROVEMENTS ALONG LIBRARY SITE.

DATE APRIL 7, 2004

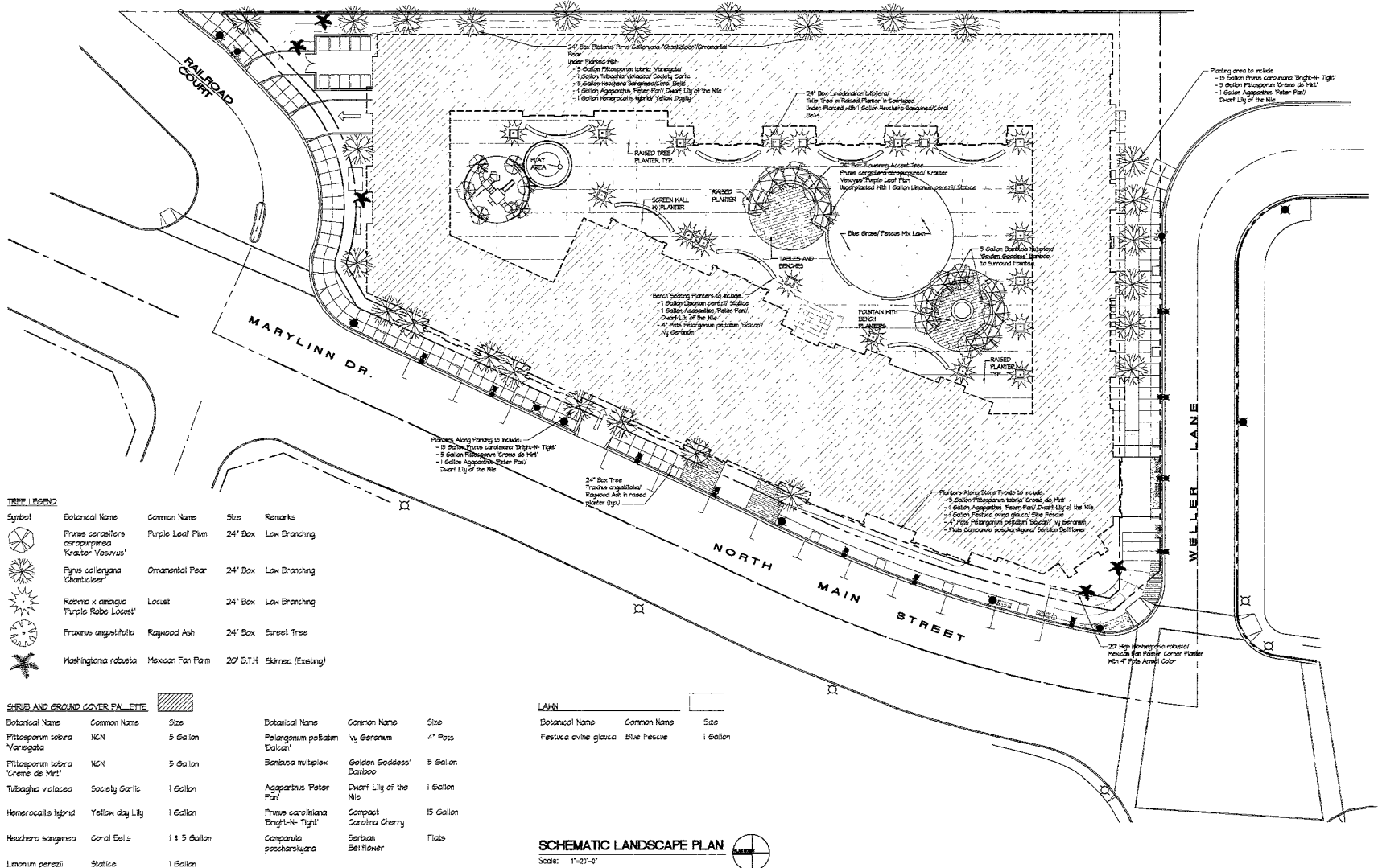
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FREMONT, CA 94539

MAPLE DELL + McCLELLAND
ARCHITECTS, LLP

ARCHITECTURE PLANNING INTERIOR DESIGN

531 STEVENS AVENUE WEST
SOLANA BEACH, CALIFORNIA 92585
T 949.335.0440 F 949.335.0440



TREE LEGEND

Symbol	Botanical Name	Common Name	Size	Remarks
	<i>Prunus caroliniana</i>	Purple Leaf Plum	24" Box	Low Branching
	<i>Pyrus calleryana</i>	Ornamental Pear	24" Box	Low Branching
	<i>Rhois x ambigua</i>	Loquat	24" Box	Low Branching
	<i>Fraxinus angustifolia</i>	Raywood Ash	24" Box	Street Tree
	<i>Washingtonia robusta</i>	Mexican Fan Palm	20' S.T.H.	Skinned (Existing)

SHRUB AND GROUND COVER PALETTE

Botanical Name	Common Name	Size
<i>Pittosporum tobira</i>	NCN	5 Gallon
<i>Pittosporum tobira</i>	'Variegata'	
<i>Pittosporum tobira</i>	'Creme de Mint'	NCN
<i>Tubeghia violacea</i>	Society Garlic	1 Gallon
<i>Hemerocallis hybrid</i>	Yellow day Lily	1 Gallon
<i>Hesperis matronalis</i>	Coral Bells	1 & 5 Gallon
<i>Linum catharticum</i>	Statice	1 Gallon

Botanical Name	Common Name	Size
<i>Pelargonium peltatum</i>	Ivy Geranium	4" Pots
<i>Bambusa multiplex</i>	'Golden Goddess'	5 Gallon
<i>Agapanthus</i>	'Peter Pan'	1 Gallon
<i>Prunus caroliniana</i>	'Bright-N-Tight'	15 Gallon
<i>Campanula poscharskyana</i>	Serbian Bellflower	Flats

LAWN

Botanical Name	Common Name	Size
<i>Festuca ovina glauca</i>	Blue Fescue	1 Gallon

SCHEMATIC LANDSCAPE PLAN

Scale: 1"=20'-0"

DATE APRIL 7, 2004

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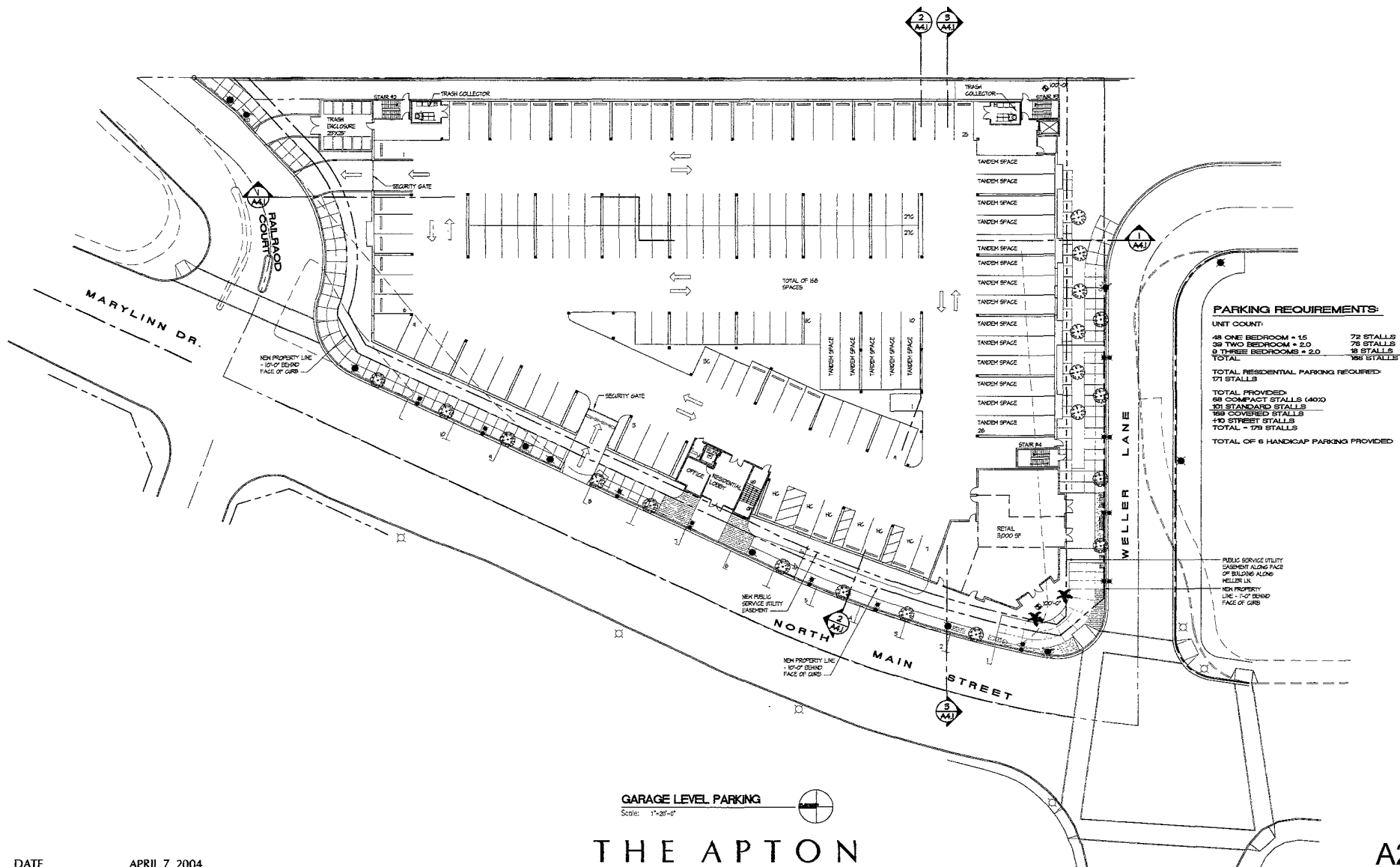
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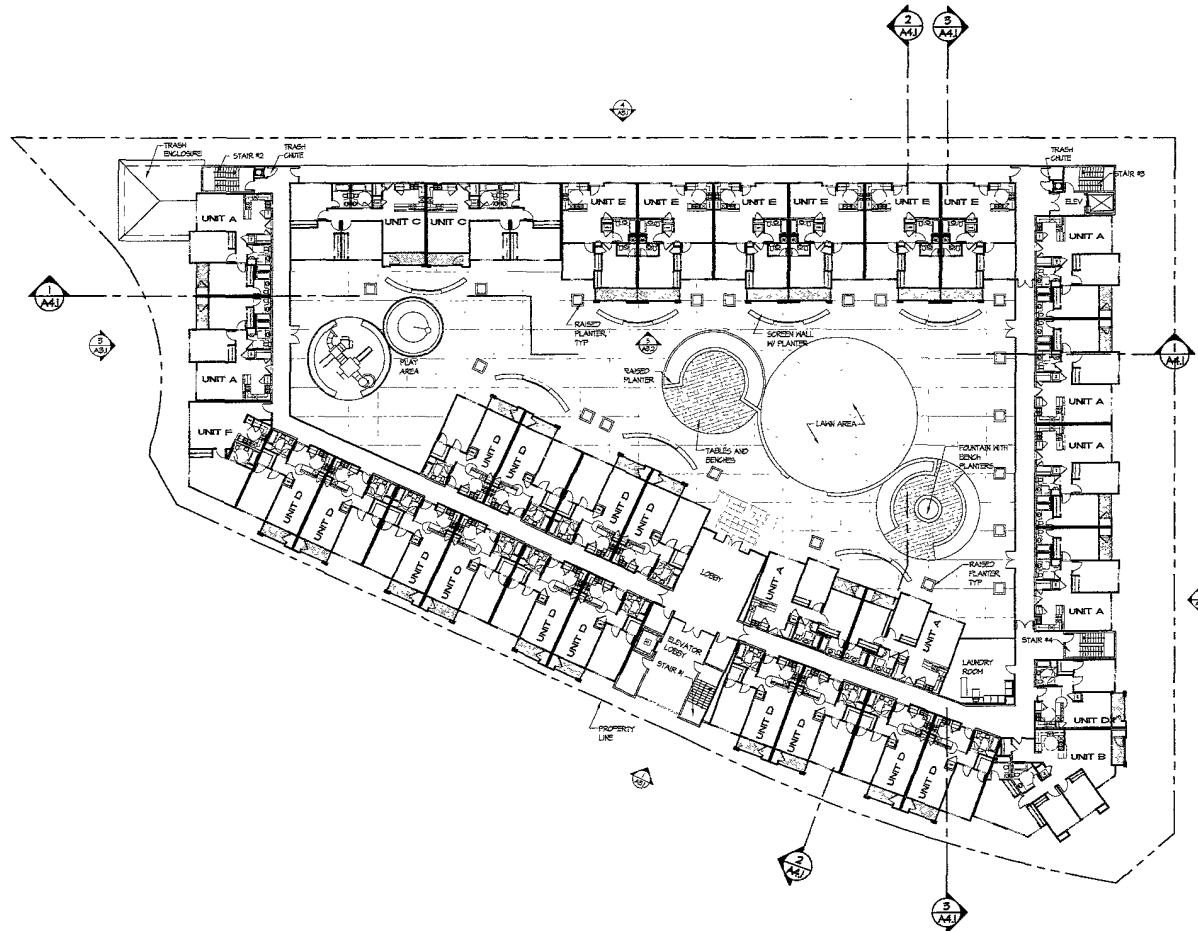
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FIRST RESIDENTIAL LEVEL FLOOR PLAN
Scale: 1"=20'-0"

OPEN SPACE SQUARE FOOTAGE:

INTERIOR COURTYARD = 19,274 SQ. FT.
PRIVATE PARK SPACE = 2,578 SQ. FT.
TOTAL PROVIDED = 21,852 SQ. FT.

PARK REQUIREMENTS:

3.5 ACRES PER 1000 PEOPLE
96 UNITS AT 2.69 PEOPLE PER UNITS = 258.24
1.5 (43%) OF THE 3.5 ACRES MAY BE PRIVATE

PRIVATE PARK SPACE = 16,914 SQ. FT.
PUBLIC PARK SPACE = 22,420 SQ. FT.
TOTAL PARK SPACE REQUIRED = 39,334 SQ. FT.

UNIT TYPE: (First Floor)

UNIT A TWO BEDROOM = 8
UNIT B THREE BEDROOM = 1
UNIT C THREE BEDROOM = 2
UNIT D ONE BEDROOM = 14
UNIT D1 ONE BEDROOM = 1
UNIT E TWO BEDROOM = 6
UNIT F ONE BEDROOM = 1

TOTAL UNITS = 33

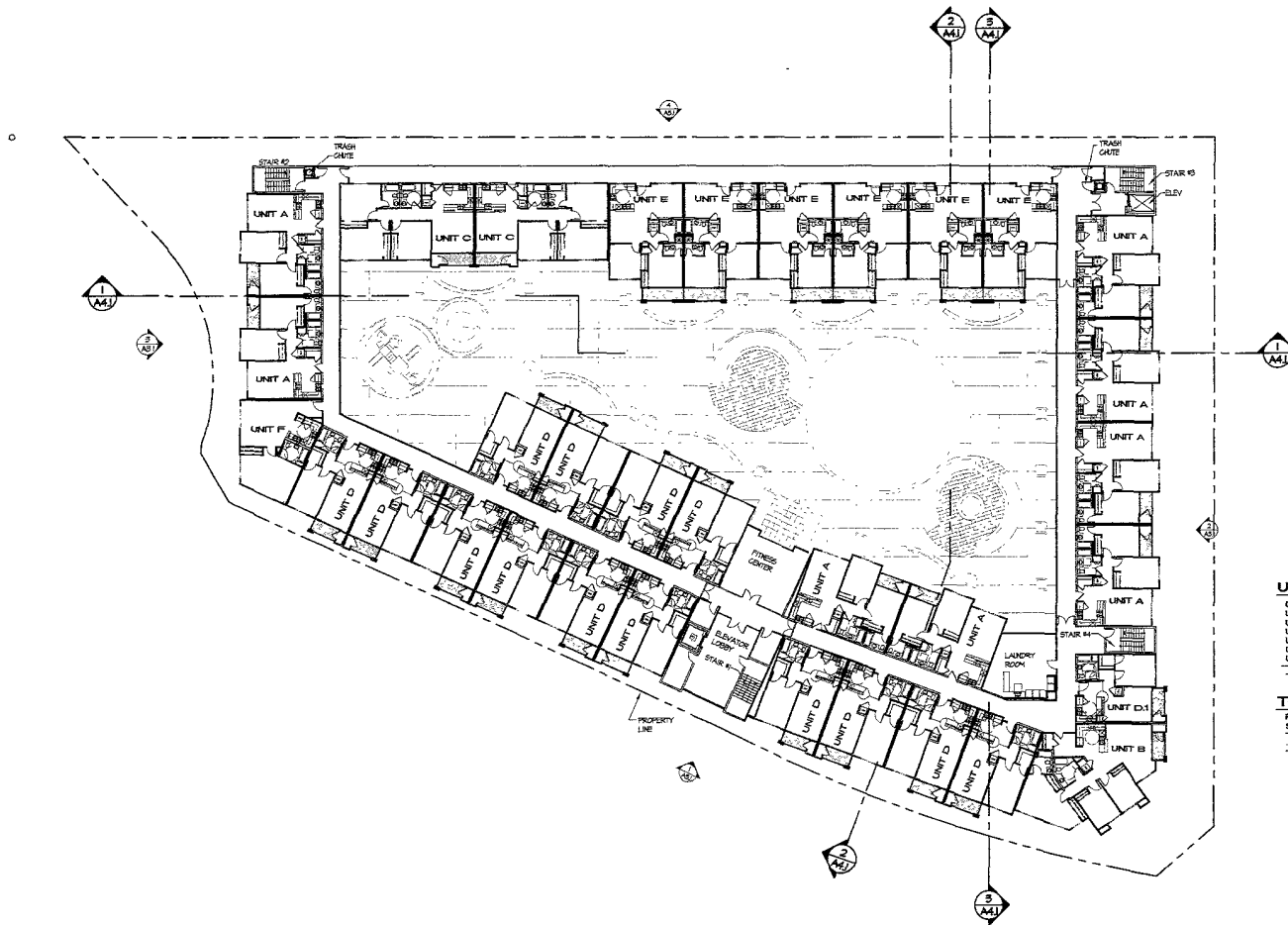
TOTAL RESIDENTIAL UNIT COUNT:

FIRST FLOOR 33 UNITS
SECOND FLOOR 33 UNITS
THIRD FLOOR 30 UNITS
TOTAL 96 UNITS

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APTON PROPERTIES, LLC
46509 MISSION BOULEVARD
FREMONT, CA 94539

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UNIT TYPE (Second Floor)

UNIT A	TWO BEDROOM	=	6
UNIT B	THREE BEDROOM	=	1
UNIT C	THREE BEDROOM	=	2
UNIT D	ONE BEDROOM	=	14
UNIT D1	ONE BEDROOM	=	1
UNIT E	TWO BEDROOM	=	6
UNIT F	ONE BEDROOM	=	1

TOTAL UNITS = 33

TOTAL RESIDENTIAL UNIT COUNT:

FIRST FLOOR	33 UNITS
SECOND FLOOR	33 UNITS
THIRD FLOOR	30 UNITS
TOTAL	96 UNITS

SECOND RESIDENTIAL LEVEL FLOOR PLAN

Scale: 1"=20'-0"



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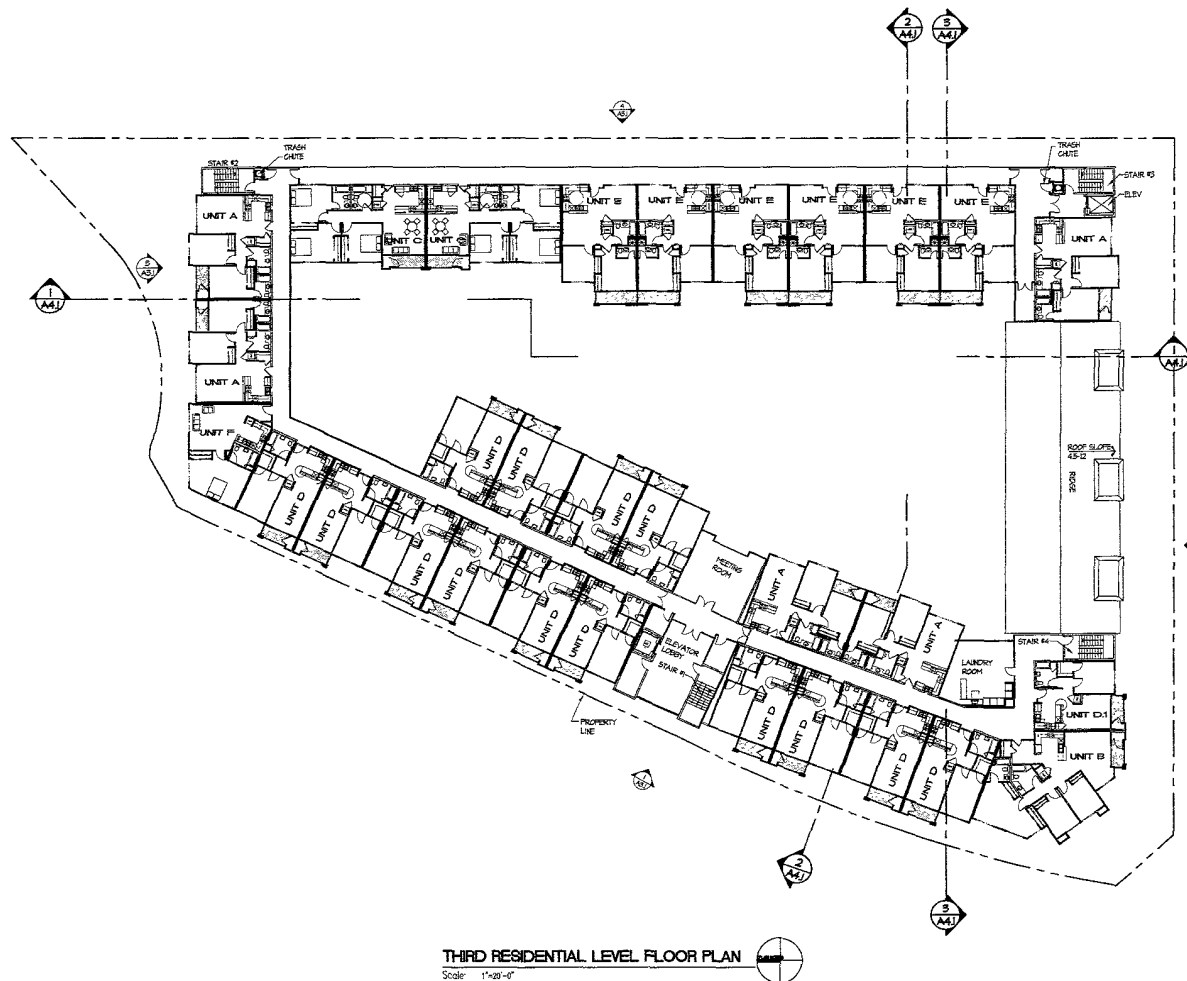
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UNIT TYPE: (Third Floor)

UNIT A	TWO BEDROOM	5
UNIT B	THREE BEDROOM	1
UNIT C	THREE BEDROOM	2
UNIT D	ONE BEDROOM	14
UNIT D-1	ONE BEDROOM	1
UNIT D-2	TWO BEDROOM	6
UNIT D-3	ONE BEDROOM	1
TOTAL UNITS		30

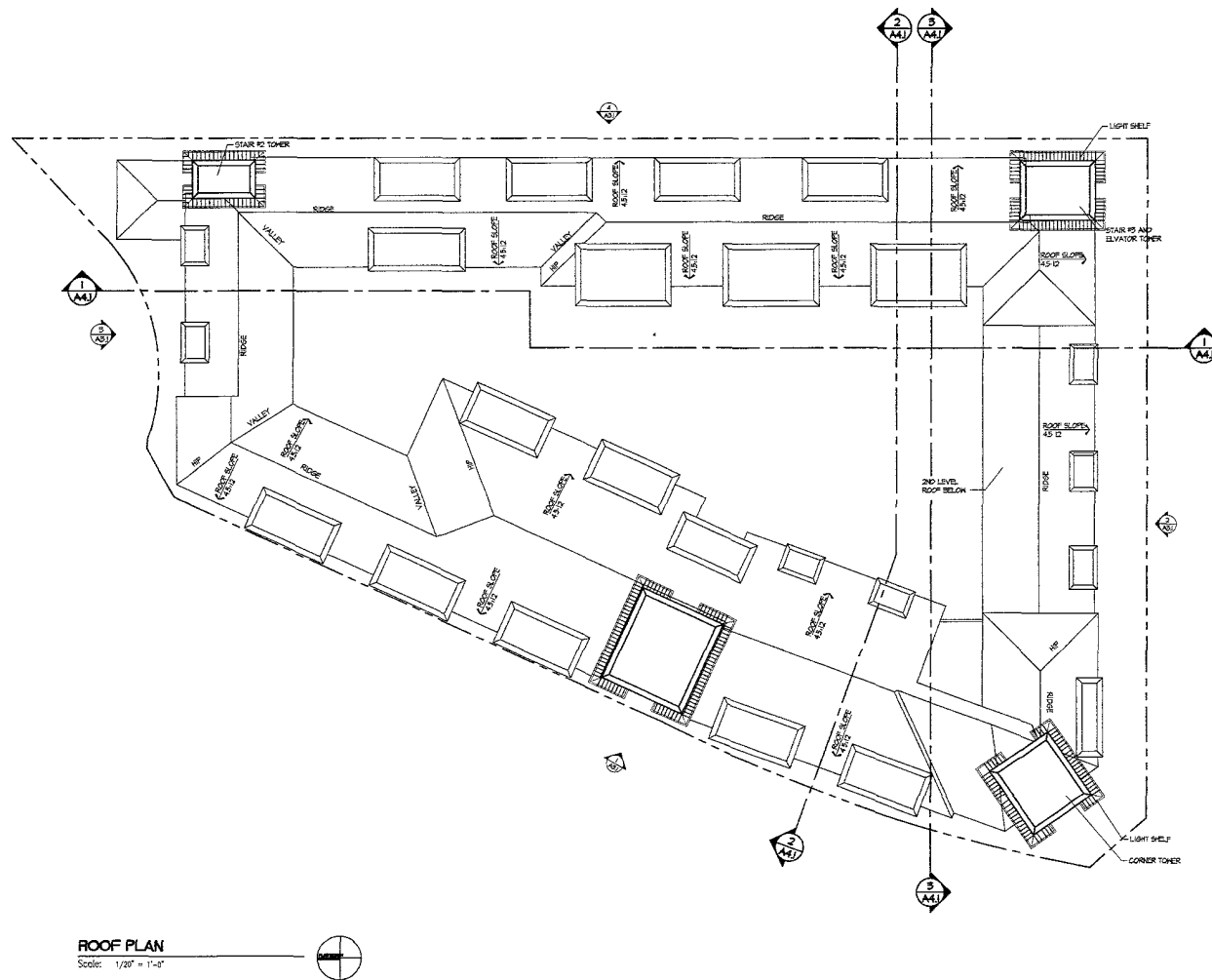
TOTAL RESIDENTIAL UNIT COUNT:

FIRST FLOOR	33 UNITS
SECOND FLOOR	33 UNITS
THIRD FLOOR	30 UNITS
TOTAL	96 UNITS

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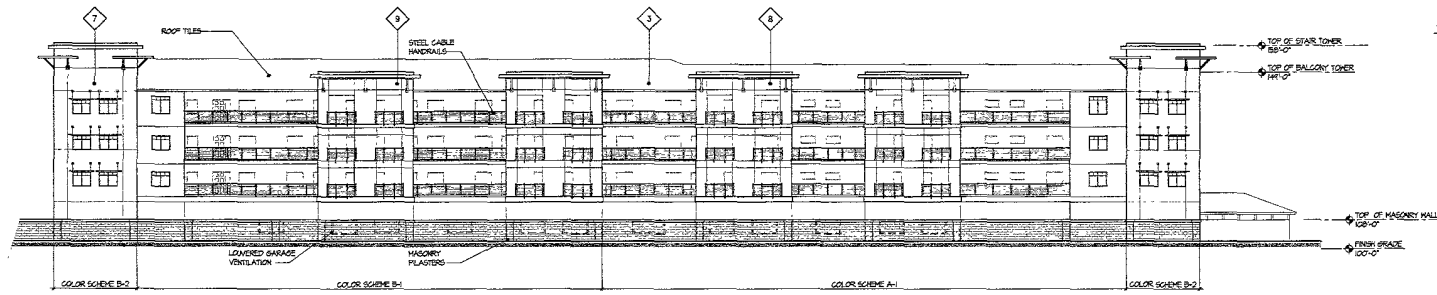


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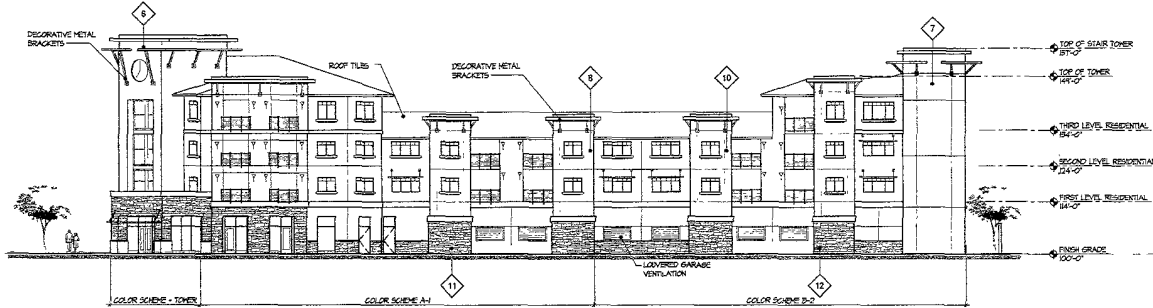
A2.6
 MAPLE DELL + McCLELLAND
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 521 STEVENS AVENUE WEST
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4 CONCEPT EAST ELEVATION

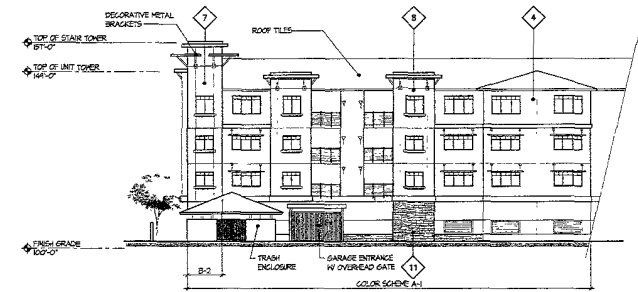
Scale: 1/16" = 1'-0"

COLOR / MATERIAL LEGEND			
METAL ROOF	ARTIQUE PATINA	STUCCO SYSTEM	STAR FIRE
ROOF TILES	OXFORD GRAY		SHAROSKIN
	DARK GREEN		LEDA ROSE
STUCCO SYSTEM	GERANG	STONE VENEER	ASPHEN
	SAVANNA OAKS		COASTAL BROWN
	BRISTOL BEIGE		
	LINDA ROSE		



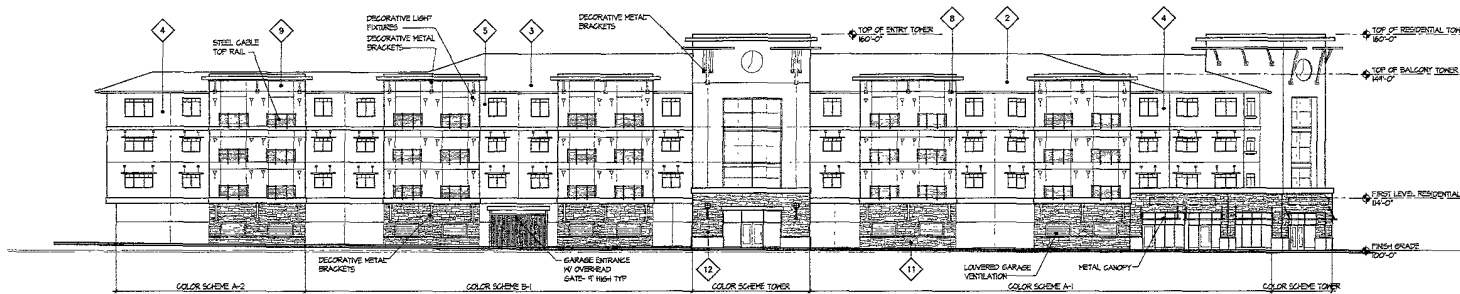
2 CONCEPT SOUTH ELEVATION - ALONG WELLER

Scale: 1/16" = 1'-0"



3 CONCEPT NORTH ELEVATION - ALONG RAILROAD COURT

Scale: 1/16" = 1'-0"



1 CONCEPT WEST ELEVATION - ALONG NORTH MAIN STREET

Scale: 1/16" = 1'-0"

COLOR SCHEMES

SCHEME A-1
STUCCO - GERANG
STUCCO - STAR FIRE
STONE VENEER - ASPHEN
SCHEME A-2
STUCCO - GERANG
STUCCO - SHAROSKIN
STONE VENEER - ASPHEN
SCHEME B-1
STUCCO - SAVANNA OAKS
STUCCO - SHAROSKIN
STONE VENEER - COASTAL BROWN
SCHEME B-2
STUCCO - SAVANNA OAKS
STUCCO - LINDA ROSE
STONE VENEER - COASTAL BROWN
TOWER SCHEME
STUCCO - BRISTOL BEIGE
METAL ROOF - ARTIQUE PATINA

DATE APRIL 7, 2004

PROJECT NUMBER 161.020122
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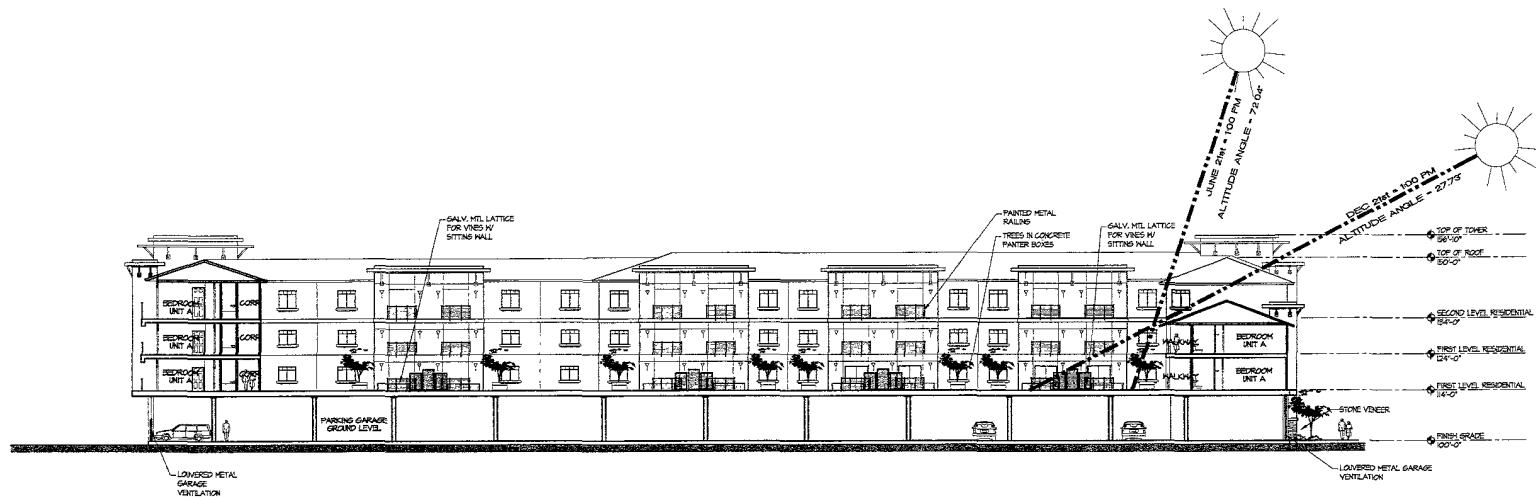
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A3.1

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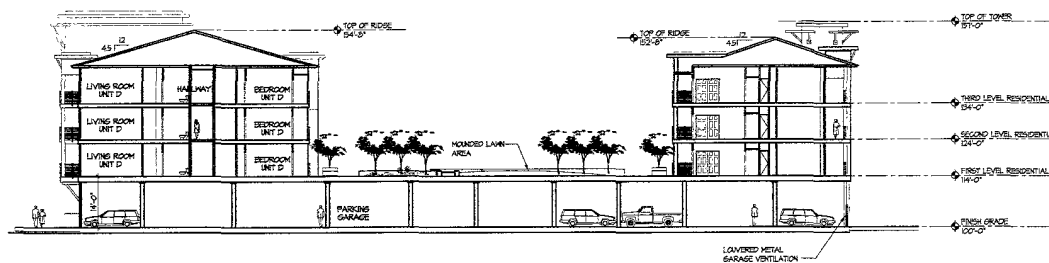
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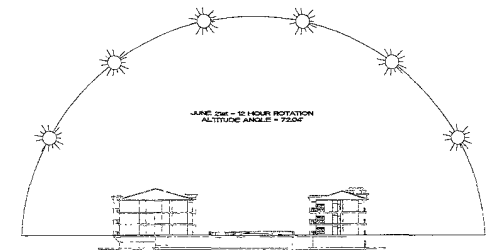
1 SECTION - WEST COURTYARD ELEVATION

Scale: 1/16" = 1'-0"



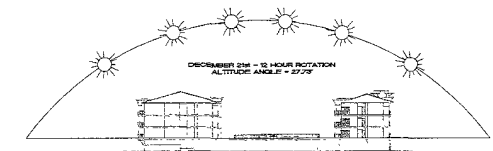
2 SECTION B - SOUTH COURTYARD ELEVATION

Scale: 1/16" = 1'-0"



3 SOUTH COURTYARD ELEVATION - SOLAR ALTITUDE

Scale: 1" = 50'-0"



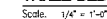
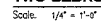
4 SOUTH COURTYARD ELEVATION - SOLAR ALTITUDE

Scale: 1" = 50'-0"

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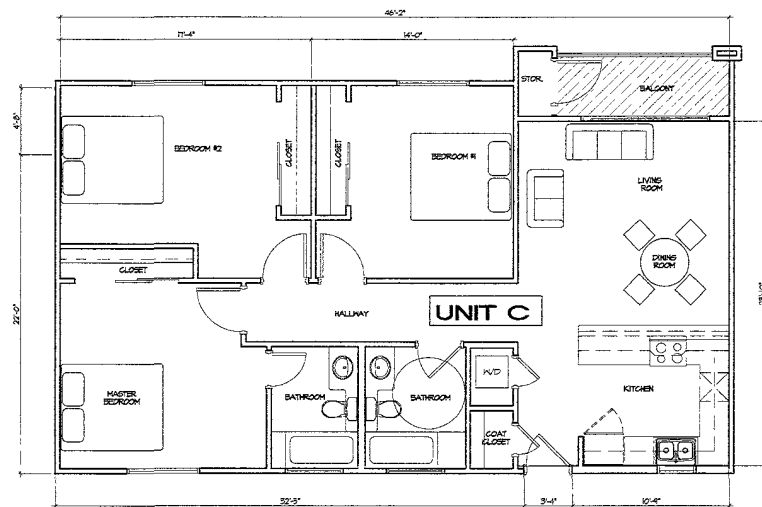


A5.1

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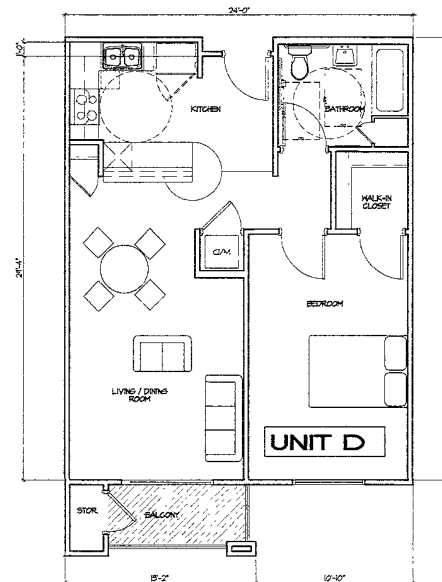
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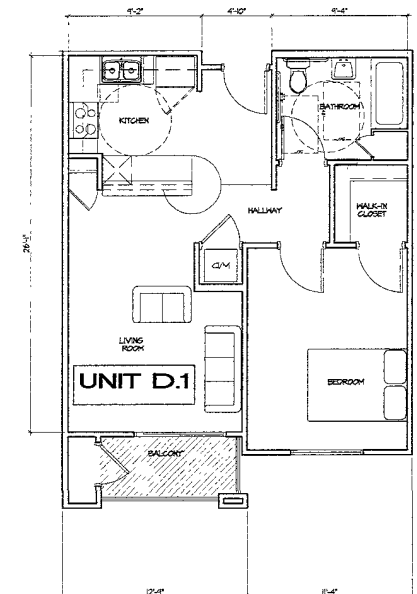
THREE BEDROOM UNIT - 1,219 s.f.

Scale: 1/4" = 1'-0"



ONE BEDROOM UNIT - 728 s.f.

Scale: 1/4" = 1'-0"



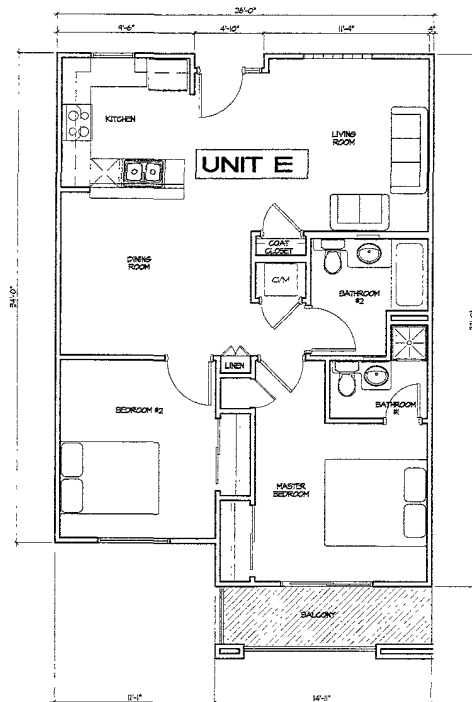
ONE BEDROOM UNIT - 644 s.f.

Scale: 1/4" = 1'-0"

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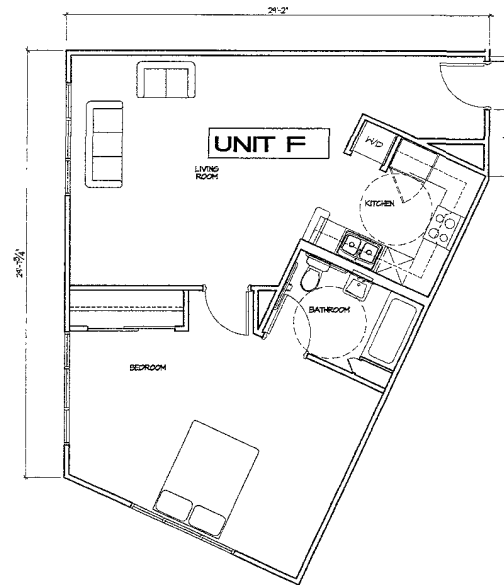
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TWO BEDROOM UNIT - 914 s.f.

Scale: 1/4" = 1'-0"



ONE BEDROOM UNIT - 839 s.f.

Scale: 1/4" = 1'-0"

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